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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~1004~~ 663 373 79

THE UNION STOCK YARDS NATIONAL BANK, APPELLANT,

vs.

A. J. GILLESPIE, THOMAS E. GILLESPIE, AND LOUIS J. GILLESPIE, COPARTNERS DOING BUSINESS UNDER THE FIRM-NAME OF A. J. GILLESPIE & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED AUGUST 15, 1887.

START OF PRINT

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, on Wednesday, the twenty-fifth day of May, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the one hundred and eleventh year.

WM. H. BRADLEY, *Clerk.*

A. J. GILLESPIE, THOMAS E. GILLESPIE, and LOUIS J. Gillespie, as Copartners Doing Business under the Firm Name of A. J. Gillespie and Co.,
vs.
THE UNION STOCK-YARDS NATIONAL BANK, Frederick J. Rappal, Lawrence L. Rappal, and Frederick J. Rappal, Jr., Composing the Firm of Rappal, Sons and Co. } In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the fifteenth day of January, 1886, came the complainants, by their solicitors, and filed in the clerk's office of the circuit court of the United States for the northern district
2 of Illinois, at Chicago, in said district, their bond for costs and bill in said entitled cause; which said bond and bill are, respectively, in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court. December Term, A. D. 1885. In Chancery.

A. J. GILLESPIE *et al.*
vs.
THE UNION STOCK-YARDS NATIONAL BANK.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and, in default of payment by the compl'ts of any costs ordered or adjudged to be paid by them, we hereby agree and stipulate that execution may issue against our property for any costs taxed against said complainant-.

Dated this 15th day of January, A. D. 1886.

BISBEE, AHRENS & DECKER.

Endorsed: Filed Jan. 15, A. D. 1886. Wm. H. Bradley, clerk.

3 *Bill.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court for said Northern District of Illinois. In Equity.

To the honorable judges of the circuit court of the United States for the northern district of Illinois:

Your orators, A. J. Gillespie, Thomas E. Gillespie, and Louis J. Gillespie, copartners doing business under the firm name of A. J. Gillespie & Co., and all citizens of the State of Missouri, residing at Kansas City, in said State of Missouri, bring this bill against The Union Stock-Yards National Bank, a corporation organized under the laws of the United States and located at the Union Stock-Yards, in the town of Lake, in the county of Cook and State of Illinois, and which bank is a citizen of the State of Illinois.

And thereupon your orators complain and say that they are and have been for some years past engaged in the business of buying and selling live stock; that on or about the first day of October, A. D. 1885, they were the owners of one thousand and sixty-five (1,065) head of cattle, and thereupon shipped the same from Kansas City aforesaid to the Union Stock-Yards, in Chicago, in said State of Illinois, to a commission firm doing business at said Union Stock-Yards under the firm name and style of Rappal, Sons & Co., to be sold by
4 said Rappal, Sons & Co., on commission, for the account of your orators; that all of said cattle so shipped by your orators were received by said Rappal, Sons & Co., as commission merchants, to be sold by them for the account of your orators, and the proceeds thereof, after deducting freights and other expenses, according to the custom and usage of commission merchants, and their commission for making such sales, was to be held by them subject to the order of or delivered to your orators; and thereupon it became the duty of said Rappal, Sons & Co. to sell said cattle for the account of your orators, at the Union Stock-Yards aforesaid, and, after deducting freights advanced by them and expenses and their commissions which they were to receive in that behalf for their services in making sales of said cattle, to hold said proceeds subject to your orators' order or to deliver to your orators the proceeds of said sales; that on the 2nd day of October, A. D. 1885, said Rappal, Sons & Co. sold, at the Union Stock-Yards aforesaid, for the account of your orators, one hundred and thirty-three (133) head of said cattle for the sum of six thousand six hundred and forty-nine dollars and fifty cents ($6,649.50), and that the proceeds of said sales, after deducting freights, and other expenses, charges, and commissions, amounted to five thousand eight hundred and eighty dollars and twenty-five cents ($5,880.25), and which the said Rappal, Sons & Co. then and there received in money, and the said Rappal, Sons & Co. thereupon, without
5 the consent or knowledge of your orators, deposited the same

in the said Union Stock-Yards National Bank to their own account and credit.

Your orators further represent that thereafter, to wit, on the 3rd day of October, A. D. 1885, the said Rappal, Sons & Co., in further discharge of their said duty, sold, for the account of your orators, eight hundred and ten (810) head of said cattle for the sum of twenty thousand five hundred and forty-seven dollars and thirty-three cents ($20,547.33), and that the proceeds thereof, after deducting freights and other expenses and commissions, amounted to sixteen thousand five hundred and nineteen dollars and sixty-nine cents ($16,519.69), which the said Rappal, Sons & Co. received on account of said sales in money; and thereupon, to wit, on said last-mentioned date, without the consent or knowledge of your orators, deposited the same to their own account and credit in the said Union Stock-Yards National Bank; that thereafter, to wit, on the 6th day of October, 1885, the said Rappal, Sons & Co., in further discharge of their said duty in regard to said cattle, sold at the Union Stock-Yards aforesaid the balance of said cattle, being one hundred and twenty-two (122) head, for the account of your orators, for the sum of two thousand five hundred and sixty-eight dollars and fifty-two cents ($2,568.52), and,

6 after deducting therefrom freights and other expenses and commissions, there remained the net sum of one thousand eight hundred and fifty-seven dollars and twenty-seven cents ($1,857.27), which the said Rappal, Sons & Co. then and there had in money; and thereupon, upon said last-mentioned date, without the consent or knowledge of your orators, deposited the same to their own credit in said Union Stock-Yards National Bank; all of which moneys, amounting in the aggregate to twenty-four thousand two hundred and fifty-seven dollars and twenty-one cents ($24,257.21), when so received by said Rappal, Sons & Co. and so deposited, was the money of your orators.

Your orators further represent that, in anticipation of said proceeds of said sales, your orators did, on the 30th day of September, 1885, draw on said Rappal, Sons & Co. for the sum of six thousand two hundred and thirty-one dollars and ten cents ($6,231.10), which your orators caused to be sent to the said Union Stock-Yards National Bank for collection, which draft your orators are informed and believe reached said bank before any of the said cattle were sold; and your orators afterwards and on the first day of October, A. D. 1885, drew a further draft upon said Rappal, Sons & Co., on account of the proceeds of said sale of cattle, for the sum of nineteen thousand five hundred and five dollars and sixty-two cents ($19,505.62), which draft was also sent to said Union Stock-Yards National Bank

7 for collection, and your orators are informed and believe it reached said Union Stock-Yards National Bank before any of said cattle were sold; and your orators afterwards and on the third day of October, 1885, drew a further draft upon said Rappal, Sons & Co. on account of the proceeds of said sale, which draft was also sent to said Union Stock-Yards National Bank for collection and reached said Union Stock-Yards National Bank, as your orators are informed and believe, before the last batch of said cattle were sold,

no part of which drafts were paid, and the same were all returned protested by direction of said Union Stock-Yards National Bank, and copies of said drafts and notices of protest are hereto annexed and made a part of this bill.

Your orators further aver that said Union Stock-Yards National Bank had notice when said moneys were deposited that they were not the moneys of said Rappal, Sons & Co., and that they were the moneys of your orators, on account of which the said drafts in the hands of said bank had been drawn by your orators.

Your orators further represent that said moneys were received by said bank and placed to the credit of said Rappal, Sons & Co., the said bank well knowing as aforesaid that the said moneys were the moneys of your orators, and that said Union Stock-Yards National Bank have ever since and do now retain all of said moneys
8 and claim to hold the same against overdrafts or other indebtedness claimed by said bank to be due to it from said Rappal, Sons & Co.; that after the return of said drafts protested as aforesaid your orators notified the said Union Stock-Yards National Bank that said moneys deposited as aforesaid with said bank by said Rappal, Sons & Co. were the moneys of your orators, and that the said Rappal, Sons & Co. had no interest therein, and also served upon said bank a written notice explaining to said bank how said moneys were received by said Rappal, Sons & Co., in substance as above set forth, and demanding the payment to your orators of said sum of money so deposited with said bank, and a copy of said notice is hereto attached and is hereby made a part of this bill; but the said bank thereupon refused and continues to refuse to pay or deliver said moneys or any part thereof over to your orators and insists upon and claims the right to hold said moneys as and for its own use, although said bank well knows that said money was and is the money of your orators, and that said Rappal, Sons & Co. when they deposited the same were holding the same in trust for the benefit of your orators; and your orators charge and claim that said Union Stock-Yards National Bank holds said money in trust for your orators and ought in equity and good conscience to pay and deliver the same to your orators, but which they steadfastly
9 refuse to do although frequently requested so to do by your orators.

Wherefore your orators, being without remedy save in a court of equity, where such matters are properly relievable, bring this their bill in equity and pray that the said Stock-Yards National Bank may be made a party defendant hereto, and that said defendant may be required to answer this bill, but not under oath, the answer hereto under oath being hereby expressly waived; and that, the premises being considered, the said defendant may be decreed and adjudged to be trustees, holding said moneys in trust for the benefit of your orators, and be adjudged and decreed to pay the entire amount thereof over to your orators as the owner in equity of said moneys; and that your orators may have such further, other, or different relief as may be conformable to equity and to your honor may seem meet.

And may your honor grant the usual subpœna or summons in

equity of this court, directed to the marshal of the said northern district of Illinois, commanding him to summon the said defendants to answer this bill at a term of this court to be named therein, according to the due course of practice of this court in equity.

A. J. GILLESPIE.
THOS. E. GILLESPIE.
LOUIS J. GILLESPIE.
BISBEE, AHRENS & DECKER,
Their Sol'rs.

BISBEE, AHRENS & DECKER,
Sol'rs & of Counsel for Complainant-.

10 $6,231.10. KANSAS CITY, Ks., 9, 30, '88.

On demand pay to the order of P. Connelly, A. cashier, sixty-two hundred & thirty-one $\frac{10}{100}$ dollars, value received, and charge to account of—

A. J. GILLESPIE & CO.

To Rappal, Sons & Co., Union Yards, Chicago, Ills.

[Written across the face:] Kansas City Stock-Yards Bank. Protested for non-payment Oct. 2, 1885. C. J., N. P.

STATE OF ILLINOIS, } ss:
County of Cook, }

Be it known that on this 2nd day of October, in the year of our Lord one thousand eight hundred and eighty-five, I, Charles Jameson, a notary public, duly commissioned and sworn, for the county of Cook, in said county and State, and residing in said county and State, at the request of the Union Stock-Yard National Bank, went with the original draft, which is above attached, to the office of Rappal, Sons & Co. (F. J. R., Jr.) and demanded payment thereon, which was refused: "Send it back." Whereupon I, *said* the said notary, at the request aforesaid, did protest, and by these presents do solemnly protest, as well against the maker of said draft, the endorsers thereof, as all others whom it may or doth concern, for exchange and all costs, charges, damages, and interest already incurred, re-exchange, by reason of the non-payment of the
11 said draft; and I, the said notary, do hereby certify that within forty-eight hours from the day and year above written due notice of the foregoing protest was put in the post office at Chicago as follows:

Notice for A. J. Gillespie & Co., Kansas City, Mo.;
" " P. Connelly, A. cashier, " "
" " Rappal, Sons & Co., U. S. Yards, Chicago, Ill.,

each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL.] C. JAMESON,
Notary Public.

Fees: Noting, 25 cents; protest and record, 75 cents; 3 notices, 75; seal, 25 cents; certificate, 25 cents; postage, .06—$2.31. Vol. 1, page 532.

$19,505.62. KANSAS CITY, KS., *Oct.* 1, 1885.

On demand pay to the order of P. Connelly, ass't cashier, nineteen thousand five hundred five $\frac{62}{100}$ dollars, value received, and charge to account of—

A. J. GILLESPIE & CO.

To Rappal, Sons & Co., Union Yards, Chicago, Ills.

[Written across the face:] Kansas City Stock-Yards Bank. Protested for non-payment Oct. 5th, 1885. C. J., N. P.

STATE OF ILLINOIS, } ss:
County of Cook, }

12 Be it known that on this 5th day of October, in the year of our Lord one thousand eight hundred and eighty-five, I, Charles Jameson, a notary public, duly commissioned and sworn, for the county of Cook, in said county and State, and residing in said county and State, at the request of the Union Stock-Yard National Bank, went with the original draft, which is above attached, to the office of Rappal, Sons & Co. and demanded payment thereon, which was refused: "Won't pay." Whereupon I, *said* the said notary, at the request aforesaid, did protest, and by these presents do solemnly protest, as well against the maker of said draft, the endorsers thereof, as all others whom it may or doth concern, for exchange and all costs, charges, damages, and interest already incurred, re-exchange, by reason of the non-payment of the said draft.

And I, the said notary, do hereby certify that within forty-eight hours from the day and year above written due notice of the foregoing protest was put in the post office at Chicago as follows:

Notice for A. J. Gillespie & Co., Kansas City, Mo.;
" P. Connelly, A cashier, " "
" Rappal, Sons & Co., U. S. Yards, Chicago, Ill.,

each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

In testimony whereof I have hereunto set my hand and
13 affixed my official seal the day and year above written.

[SEAL.] C. JAMESON,
Notary Public.

Fees: Noting, 25 cents; protest and record, 75 cents; 3 notices, 75; seal, 25 cents; certificate, 25 cents; postage, .06—$2.31. Vol. 1, page 539.

$691.70 KANSAS CITY, KS., *Oct.* 3, 1885.

At sight pay to the order of P. Connelly, as. cashier, six hundred and ninety-one $\frac{70}{100}$ dollars, value received, and charge to account of— A. J. GILLESPIE & CO.

To Rappal, Sons & Co., Chicago, Ill.

[Written across the face:] Kansas City Stock-Yards Bank. Protested for non-payment Oct. 5, '85. C. J., N. P.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Be it known that on this 5th day of October, in the year of our Lord one thousand eight hundred and eighty-five, I, Charles Jameson, a notary public, duly commissioned and sworn, for the county of Cook, in said county and State, and residing in said county and State, at the request of the Union Stock-Yard National Bank, went with the original draft, which is above attached, to the office of Rappal, Sons & Co. and demanded payment thereon, which was refused:

"Won't pay." Whereupon I, *said* the said notary, at the re-
14 quest aforesaid, did protest, and by these presents do solemnly protest, as well against the maker of said draft, the endorsers thereof, as all others whom it may or doth concern, for exchange and all costs, charges, damages, and interest already incurred, re-exchange, by reason of the non-payment of the said draft.

And I, the said notary, do hereby certify that within forty-eight hours from the day and year above written due notice of the foregoing protest was put in the post office at Chicago as follows:

Notice for A. J. Gillespie & Co., Kansas City, Mo.;
" P. Connelly, A. cashier, "
" Rappal, Sons & Co., U. S. Yards, Chicago, Ill.;

each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL.] C. JAMESON,
Notary Public.

Fees: Noting, 25 cents; protest and record, 75 cents; 3 notices, 75; seal, 25 cents; certificate, 25 cents; postage, .06—$2.31. Vol. 1, page 538.

15 CHICAGO, ILLS., *Oct. 16th*, 1885.

Union Stock-Yards National Bank, Union Stock-Yards, city.

GENTLEMEN: On the 2nd day of October, 1885, the firm of Rappal, Sons & Co., live stock commission merchants, at the Union Stock-Yards, sold for our account one hundred and thirty-three head of cattle, which netted us $5,880.25, and deposited the money to their credit in your bank. On the 3rd of October, 1885, said Rappal, Sons & Co. sold for our account eight hundred and ten head of cattle, which netted us $16,519.69, and deposited the money in

your bank to their credit. On the 6th of October, 1885, Rappal, Sons & Co. sold for our account one hundred and twenty-two head of cattle, which netted us $1,857.27, and deposited the money in your bank to their credit.

The aggregate of these three sales for our account was twenty-four thousand two hundred and fifty-seven dollars and twenty-one cents ($24,257.21).

These cattle all belonged to us and were consigned to Rappal, Sons & Co., as commission merchants, to be sold for our account, the money, as above stated, which they deposited in your bank, was and is our money, and we hereby demand of you the payment to us of said sum of $24,257.21, and the firm of Bisbee, Ahrens & Decker are our legally authorized attorneys and agents to
16 receive and receipt for said money or to take such action as they may deem best in the premises.

Yours truly, A. J. GILLESPIE & CO.

Endorsed: Filed Jan. 15, 1886. Wm. H. Bradley, clerk.

On the same day, to wit, on the fifteenth day of January, 1886, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

The United States of America to the Union Stock-Yards National Bank, Greeting:

We command you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of March next, to answer the bill of complaint of A. J. Gillespie, Thomas E. Gillespie, and Louis J. Gillespie, copartners doing business under the firm name of A. J. Gillespie and Co., this day filed in the clerk's office of said court, in said city of Chicago, then
17 and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 15th day of January, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the 110th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

MEMORANDUM.—The above-named defendant is notified that unless it shall enter its appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is re-

turnable the complainants' bill will be taken against it as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ within my district in the following manner, to wit: Upon Union Stock-Yards National Bank, therein named, on the 28th day of January, A. D. 1886, by personally delivering to G. E. Conrad, cashier of said bank, a true copy of the same on the aforesaid day.

18 I did not serve the president of the aforesaid bank, having been unable to find him within my district.

F. H. MARSH, *U. S. Marshal,*
By GEO. N. JONES, *Deputy.*

Endorsed: Filed Jan'y 29, A. D. 1886. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-seventh day of February, 1886, came the Union Stock-Yards National Bank, by its solicitors, and filed in said clerk's office its appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

In the Circuit Court of the United States for the Northern District of Illinois.

GILLESPIE *et al. vs.* THE UNION STOCK YARDS NATIONAL BANK.

We hereby enter the appearance of the Union Stock-Yards National Bank in the above-entitled cause, and also enter our appearance as solicitors of said Union Stock-Yards National Bank.

PECKHAM & BROWN, *Solicitors.*

Endorsed: Filed Feb'y 27, 1886. Wm. H. Bradley, clerk.

19 Afterwards, to wit, on the eighth day of March, 1886, came the Union Stock-Yards National Bank, by its solicitors, and filed in said clerk's office its demurrer to the bill in said entitled cause; which said demurrer is in the words and figures following, to wit:

Demurrer.

In the Circuit Court of the United States. March Term, A. D. 1886.
In Chancery.

A. J. GILLESPIE *et al.*
vs.
THE UNION STOCK-YARDS NATIONAL BANK.

The demurrer of the Union Stock-Yards National Bank to the bill of complaint of A. J. Gillespie and others, the above-named plaintiffs.

This defendant, by protestation, not confessing or acknowledging

all or any of the matters and things in said plaintiffs' bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for cause of demurrer showeth that the said complainants have not in and by their said bill made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought and prayed for from or against this defendant, and because they have a perfect and complete remedy at law.

Wherefore, and for divers other good causes of demurrer
20 appearing in the said bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

PECKHAM & BROWN,
Solicitors for Defendant.

I hereby certify that I have examined the bill in the above-entitled cause and am familiar with the contents of the same and of the within demurrer filed to the same, and I hereby certify that, in my opinion, the demurrer is well founded in point of law.

Chicago, Feb. 26, 1886.

EDWARD O. BROWN, *Of Counsel.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Elmer Washburn, on oath depose and say that I am the president of the Union Stock-Yards National Bank, the defendant who hath within demurred to the bill of complaint of A. J. Gillespie *et al.*, and that the said demurrer has not been made and is not to be interposed for delay.

ELMER WASHBURN.

Subscribed & sworn to before me this 2nd day of March, A. D. 1886.

[SEAL.] ERNEST E. BAKER,
Notary Public.

Endorsed: Filed this 8th day of M'ch, A. D. 1886. Wm. H. Bradley, clerk.

21 Afterwards, to wit, on the seventeenth day of May, in the adjourned May term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ANDREW J. GILLESPIE *et al.*
vs.
THE UNION STOCK-YARDS NATIONAL BANK. } In Chancery.

The parties come by their solicitors, and the court, having considered the demurrer of the Union Stock-Yards National Bank to

the bill of complaint herein, overrules the same, and, on motion of Mr. Brown, leave is given said bank to file an answer within thirty days.

Afterwards, to wit, on the twenty-fourth day of May, in the adjourned May term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ANDREW J. GILLESPIE *et al.*
vs.
THE UNION STOCK-YARDS NATIONAL BANK. } In Chancery.

22 On motion of Mr. Bisbee leave is hereby given said complainants to file an amended bill herein, which is done, and, on motion of Mr. Brown, the demurrer of said bank to the original bill herein is hereby ordered to stand to said amended bill; and thereupon it is further ordered that said demurrer be overruled, and leave is given said bank to answer herein by the first day of July next.

On the same day, to wit, on the twenty-fourth day of May, 1886, came the complainants, by their solicitors, and filed in said clerk's office their amended bill in said entitled cause; which said amended bill is in the words and figures following to wit:

Amended Bill.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the United States Circuit Court for the Northern District of Illinois.

ANDREW J. GILLESPIE, THOMAS E. GILLESPIE, and LOUIS J. GILLESPIE, Copartners Composing the Firm of A. J. Gillespie & Co.,
vs.
THE UNION STOCK-YARDS NATIONAL BANK.

23 And now come the complainants, by their solicitors, Bisbee, Ahrens & Decker, and by leave of court amend the bill of complaint herein as follows:

(1.) By inserting between the word "Co." and the words "to be sold," where they occur in the 25th line of the first page of said bill, the following: "Composed of F. J. Rappal, L. L. Rappal, and F. J. Rappal, Jr."

(2.) By inserting between the word "that" and the word "the," where they occur in the first line of the 6th page of said bill, the following: "F. J. Rappal, L. L. Rappal, F. J. Rappal, Jr., and;" also by inserting in the place of the words "a party," at the end of said line, the word "parties."

(3.) By inserting between the words "said" and "may," where they occur in the second line of the said 6th page of said bill, the word "defendants" in lieu of the word "defendant."

(4.) By inserting between the word "defendant" and the word "may," where they occur in the 5th line of the 6th page of said bill, the following: "The Union Stock-Yards National Bank."

(5.) By inserting after the last word in the 24th line of page 3 of said bill the following: "And the several sums of money so deposited were received by the said Union Stock-Yards National Bank and credited to said Rappal, Sons & Co., although the said Union Stock-Yards National Bank had notice and full knowledge that, and your orators aver that, said moneys so deposited were the proceeds of property belonging to your orators which the said Rappal, Sons & Co. had sold for the account of your orators; that the same
24 belonged to your orators; that the same were held in trust for your orators by the said Rappal, Sons & Co., and that it was their duty to hold the same distinct from their private funds, subject to the order of your orators, and to transmit the same to your orators as your orators might direct."

(6.) By inserting after the words "Sons & Co.," at the end of the 4th line of the 5th page of the bill, the following: "Which overdrafts, if any, and which indebtedness, if any, occurred and arose, as your orators aver on information and belief, before any of said moneys were deposited as aforesaid in said bank, and to apply on which, your orators aver, none of said moneys were deposited, the claim of said bank being only a right to offset such overdrafts and indebtedness against the moneys so deposited; that said Union Stock-Yards National Bank has not forborne said indebtedness or been placed in any different position in regard to said overdrafts or indebtedness and will suffer no prejudice or loss whatever as to said overdrafts or indebtedness by accounting to your orators for said money, as in equity and good conscience it ought to do."

(7.) By inserting in the 21st line of the 5th page of the bill, between the word "orators" and the words "and your," where they occur in said line, the following: "That the said Rappal, Sons & Co. and each and every member thereof is insolvent and irre-
25 sponsible, and nothing can be recovered from said firm or any member thereof by any legal proceeding; that such insolvency, in fact, existed at the time said money was deposited as aforesaid; that said insolvency was wholly unknown to your orators when your orators consigned said cattle to said firm for sale, and, in fact, was unknown to your orators until after said money had been deposited as aforesaid, but that the said Union Stock-Yards National Bank were fully aware of the insolvency of said firm at the time said deposits were made, and are attempting to apply said deposits on the indebtedness due said bank from said firm because of such insolvency, well knowing that its actings in that behalf are in fraud of your orators' rights in the premises."

And that process issue against all of said defendants.

ANDREW J. GILLESPIE,
THOS. E. GILLESPIE, AND
LOUIS J. GILLESPIE,
By BISBEE, AHRENS & DECKER,
Their Sol'rs.

BISBEE, AHRENS & DECKER,
Sol'rs and of Counsel for Compl'ts.

Endorsed: Filed May 24, 1886. Wm. H. Bradley, clerk.

26 Afterwards, to wit, on the twenty-sixth day of May, 1886, there issued out of said clerk's office an *alias* writ of subpœna in said entitled cause; which said *alias* writ is in the words and figures following, to wit:

Alias Writ.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

The United States of America to F. J. Rappal, L. L. Rappal, and F. J. Rappal, Jr., impleaded with the Union Stock-Yards National Bank, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of July next, to answer the amended bill of complaint of Andrew J. Gillespie, Thomas E. Gillespie, and Louis J. Gillespie, copartners, &c., heretofore filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the
27 Supreme Court of the United States of America, at Chicago aforesaid, this 26th day of May, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence — 110th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainants' bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ within my district in the following manner, to wit: Upon F. J. Rappal, Jr., therein named, on the 26th

day of May, A. D. 1886, by personally delivering to him a true copy of the same on the aforesaid day. I also served the same upon the following-named defendants, not having been able to find them to serve personally, by leaving a true copy for each of them at their usual place of abode with an adult person and a member of their family, to wit: Upon F. J. Rappal on the 28th day of May, A. D. 1886, with Theresa Rappal; also upon L. L. Rappal on the 28th day of May, A. D. 1886, with Theresa Rappal.

F. H. MARSH,
U. S. Marshal,
28 By GEO. N. JONES, *Deputy.*

Endorsed: Filed May 28, A. D. 1886. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twelfth day of July, 1886, came F. J. Rappal, L. L. Rappal, and F. J. Rappal, Jr., by their solicitor, and filed in said clerk's office their appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

A. J. GILLESPIE *et al.*
vs.
UNION STOCK-YARDS NATIONAL BANK *et al.*
Bill.

And now comes H. H. C. Miller and enters the appearance of F. J. Rappal, L. L. Rappal, and F. J. Rappal, Jr., in the above-entitled cause, and also his appearance as solicitor for the parties defendant just named.

H. H. C. MILLER,
Sol'r for F. J. Rappal, L. L. Rappal, and F. J. Rappal, Jr.

Endorsed: Filed July 12, 1886. Wm. H. Bradley, clerk.

29 Afterwards, to wit, on the thirteenth day of July, 1886, came the Union Stock-Yards National Bank, by its solicitors, and filed in said clerk's office its answer to the bill and amended bill in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of Union Stock-Yards National Bank.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the United States Circuit Court for the Northern District of Illinois. In Chancery.

A. J. GILLESPIE *et al.*
vs.
THE UNION STOCK-YARDS NATIONAL BANK *et al.*

The answer of the Union Stock-Yards National Bank to the original and amended bill of complaint in the above-entitled cause.

This defendant, The Union Stock-Yards National Bank, reserving unto itself all and all manner of exceptions and objections that may be had or taken to the many errors, uncertainties, and imperfections in said bill of complaint contained, for answer thereto or to such parts thereof as it is advised is or may be necessary for it to answer unto, answering, says—

That it does not know whether or not the complainants in
30 said bill are and have been for some years past engaged in the business of buying and selling live stock or not, and leave the complainants to prove the same as they may be advised, but on information and belief denies that on or about the 1st day of October, 1885, or at any other time the said complainants were the owners of 1,065 head of cattle, which they shipped to a commission house, composed of F. J. Rappal, L. L. Rappal, and F. J. Rappal, Jr., doing business under the firm name of Rappal, Sons & Co., to be sold on commission for the account of said complainants, and deny that any cattle were received by said Rappal, Sons & Co. as commission merchants to be sold for the account of said complainants on commission, and deny (on information and belief) that the proceeds or any part thereof of the sale of any such cattle were to be held for the account of the complainants, or that it became the duty of said Rappal, Sons & Co. to sell any such cattle for the account of the complainants, at the Union Stock-Yards or elsewhere, or to hold any proceeds or any part thereof from such sale subject to the complainants' order, or to deliver any such proceeds or any part thereof to the complainants.

And this defendant further denies, on information and belief, that said Rappal, Sons and Company ever sold, at the Union Stock-Yards or elsewhere, for the account of the complainants any cattle for any sum or sums, and denies that any sum or sums arising from such sale or sales were deposited in this defendant bank with or without the consent of complainants.

31 This defendant, further answering, says that Rappal, Sons & Co. had a bank account with this defendant bank of an ordinary mercantile character, and that from time to time the said Rappal, Sons & Co. deposited sums of money to their own account with this defendant; but they say that as to the sources from which

any money deposited with this defendant by Rappal, Sons & Co. came to said Rappal, Sons & Co. this defendant had no knowledge or notice, but it alleges that it always supposed and now supposes and believes that such deposits were of money belonging to the said Rappal, Sons & Co. or which they had the right to deal with as their own and deposit to their own account, and that it is informed and believes that there was never any deposit made in said defendant bank of money belonging to said complainants or arising from the proceeds of the sale of any property belonging to said complainants; but whether or not such be the fact this defendant alleges that if any such deposits were ever made this defendant had no notice, knowledge, or reasonable ground of notice or knowledge that said deposits were of money belonging to said complainants or in which they had any interest, or that the same were held in trust for said complainants by said Rappal, Sons & Co., or that it was the duty of said Rappal, Sons & Co. to hold the same distinct from their private funds subject to the order of complainants or to transmit the same to the complainants.

And this defendant, further answering, says that upon every business day for several months before the 9th day of October, 1885, the said Rappal Sons & Co. made deposits in the usual and nat-
32 ural course of business between the said bank and the said Rappal, Sons & Co., and they say that the said Rappal, Sons & Co., like other commission merchants doing business at the Union Stock-Yards, deposited money and checked from said bank money very frequently, and that the account between this defendant and the said Rappal, Sons & Co. was one consequently in which there were many transactions; but this defendant says, as matter of fact, although it deems such allegation immaterial, that there were no deposits of the various specific sums or sums corresponding in amount to the same mentioned in the complainants' said bill as deposited with said bank upon the 2nd, 3rd, and 6th days of October, respectively, although deposits were made upon those dates of other sums, which deposits, as this defendant has before averred, were in the ordinary course of business, and of the source of which deposits this said defendant had no knowledge or means of knowledge.

And this defendant admits that certain drafts drawn by the firm of A. J. Gillespie & Co. upon Rappal, Sons & Co., as described in complainants' bill, reached the Union Stock-Yards National Bank from the Kansas City Stock-Yards Bank upon the 2nd and 5th of October, respectively; and this defendant says that the said drafts were duly presented by this defendant as the correspondent and agent of the Kansas City Stock-Yards Bank, and that upon payment being refused upon them they were duly protested and were duly returned to said Kansas City Stock-Yards Bank, and that
33 every requirement of its duty in relation to said drafts was performed by this defendant; but this defendant says that it does not know whether or not said drafts reached the bank before any of the said cattle specified in the complainants' said bill were sold, if any such cattle were sold by said Rappal, Sons & Co., either for the complainants or for any other principal, but this defendant

alleges, on information and belief, that no such cattle were sold for the account of said complainants.

And this defendant denies that it had any knowledge or any means of knowledge or could be held to any knowledge by any connecting circumstances that the said drafts were connected in any manner whatever, if they were so connected, with any deposits made upon said dates or at any other time with this defendant by Rappal, Sons & Co., and it says that the allegations in said bill respecting said drafts are entirely immaterial; but it says that in the course of its business it has many drafts upon commission men at the Union Stock-Yards, and that many are refused and many paid, and that the refusal of a sight draft does not imply anything more than that, in the opinion of the drawees, the said draft was unjustifiably drawn in some particular, and that it is no notice of anything whatever to the bank which presents the same except that the same is not to be paid; and this defendant says that all deposits received by this defendant from the said Rappal, Sons & Co. were placed to the credit of said Rappal, Sons & Co. went into the ordinary mercantile business account between the said Rappal, Sons & Co. and this
34 defendant, and that the account has since been closed, and that neither does this defendant owe Rappal, Sons & Co. anything on this account nor is the said account overdrawn.

And this defendant says that said account was so closed upon the 9th day of October, 1885, and long before this defendant had any notice from the said complainants or otherwise that the said complainants' claimed that any money deposited in said bank by Rappal, Sons & Co. was the property of the said complainants or the proceeds of any property claimed by said complainants.

And this defendant says that it paid out in good faith, in checks drawn by Rappal, Sons & Co. upon this defendant to the order of various persons, between the second day of October mentioned in said bill and the time when this account was closed, almost $32,000, being an amount far in excess of that which the complainants in their said bill allege was deposited by the said Rappal, Sons & Co. with this defendant and belonged to them, the said complainants.

And this defendant says that the deposits between said second day of October and said 9th day of October amounted to a considerably larger sum, but that upon said second day of October the said firm of Rappal, Sons & Co. were indebted to this defendant by an overdraft, as is very customary in the ordinary course of business between this defendant and its customers at the Union Stock-Yards, but that since said second day of October said Rappal, Sons & Co. have not been indebted in overdrafts to this defendant; and this defendant says that it has and had since the second day of October, and
35 before having had any notice that complainants claimed any property in any money deposited with this defendant by Rappal, Sons & Co., and before it had any notice that the said complainants claimed that the proceeds of any property belonged to them had been deposited with it by said Rappal, Sons & Co., paid out money on the checks of said Rappal, Sons & Co. drawn upon the faith of the deposits of said Rappal, Sons & Co. with it and in the

ordinary course of business, and as it was bound by its implied contract as banker with Rappal, Sons & Co. to do, far exceeding the amount claimed by the complainants as the amount belonging to them, and had given up to said Rappal, Sons & Co. securities and other valuable consideration in consequence of such deposits as Rappal, Sons & Co. made with it on and after Oct. 2d, 1885, and before Oct. 9th, 1885.

And this defendant says that it neither admits nor denies the insolvency of said Rappal, Sons & Co. and each and every member thereof, as alleged in said bill, at the time the same was filed, but leaves the complainants to prove the same as they may be advised, if they think it material, but, upon information and belief, denies that the said Rappal, Sons & Co. were insolvent before the 9th day of October, when said account between this defendant and said Rappal, Sons & Co. was closed; and denies that this said defendant was aware of the insolvency of said firm upon the 2nd, 3rd, & 6th days of October, if the said firm was so insolvent, and says that it did not so believe them to be insolvent; but this defendant says that if the said firm of Rappal, Sons
36 & Co. were insolvent at that time that, upon information and belief, it alleges that said complainants must have known the same if any person knew it; and this defendant admits that at some time after the date of the notice or letter addressed to the Union Stock-Yards National Bank, appended to the complainants' bill of complaint as an exhibit, to wit, some time on or after the 16th day of October, 1885, defendant received a notice in the form of said letter that the complainants demanded of this defendant $24,257.21; and this defendant admits that it has refused to pay or deliver any such money or any sum of money to said complainants, but denies that it holds said money as and for its own use, and says that it paid out said money in the ordinary course of business between Rappal, Sons & Co. and this defendant before any such notice was received and in entire ignorance of any rights of these complainants, if any such they had (which this defendant denies), as against said Rappal, Sons & Co.

And this defendant denies that it knows that such money was and is the money of complainants, or that when Rappal, Sons & Co. deposited the same they were holding the same in trust for the benefit of complainants, or that this defendant holds said money in trust for the complainants, or that it ought in equity and good conscience to pay and deliver the same to the complainants, and says that it holds no money whatever belonging to complainants, and that it has
37 in its hands no money or other property belonging to said Rappal, Sons & Co., and that it had no such money and no property of Rappal, Sons & Co. when it first received notice from the complainants in this case of the complainants' claims; and, having fully answered the complainants' said bill of complaint, this defend-

ant prays that it may be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE UNION STOCK-YARDS NATIONAL BANK OF CHICAGO,
[SEAL.] By ELMER WASHBURN, *President.*

Attest:
ELMER WASHBURN, *Pres't.*

Endorsed: Filed July 13, 1886. Wm. H. Bradley, clerk.

38 On the same day, to wit, on the thirteenth day of July, 1886, came A. J. Gillespie, Thomas E. Gillespie, and L. J. Gillespie, by their solicitors, and filed in said clerk's office their replication to the answer of the Union Stock-Yards National Bank in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
Northern Dist. of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

A. J. GILLESPIE, THOMAS E. GILLESPIE, and LOUIS J. GILLESPIE, Copartners Doing Business under the Firm Name and Style of A. J. Gillespie & Co.,

vs.

UNION STOCK-YARDS NATIONAL BANK *et al.*

The replication of A. J. Gillespie, Thomas E. Gillespie, and Louis J. Gillespie, complainants, to the separate answer of the Union Stock-Yards National Bank.

The repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication
39 thereunto say that they will aver, maintain, and prove their bill and amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by the said bill and amended — they have already prayed.

BISBEE, AHRENS & DECKER,
Solicitors for Complainants.

Endorsed: Filed this 13th day of July, A. D. 1886. Wm. H. Bradley, clerk.

40 Afterwards, to wit, on the fourteenth day of July, in the July term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

A. J. GILLESPIE *et al.*
vs.
UNION STOCK-YARDS NATIONAL BANK *et al.* } In Chancery.

On motion of the parties herein, by their solicitors, it is ordered that this cause be referred to E. B. Sherman, master in chancery, to take proof and report the same to the court.

41 Afterwards, to wit, on the sixteenth day of July, 1886, came F. J. Rappal, L. L. Rappal, and F. J. Rappal, Jr., by their solicitor, and filed in said clerk's office their answer to the bill and amended bill in said entitled cause; which said answer is in the words and figures following, to wit:

Bill.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the United States Circuit Court for the Northern District of Illinois.

A. J. GILLESPIE *et al.*
vs.
UNION STOCK-YARDS NATIONAL BANK *et al.*

The answer of Frederick J. Rappal, Lawrence L. Rappal, and Frederick J. Rappal, Jr., to the original and amended bill of complaint in the above-entitled cause.

The defendants, Frederick J. Rappal, Lawrence L. Rappal, and Frederick J. Rappal, Jr., reserving unto themselves all and all manner of exceptions and objections that may be had or taken to the many errors, uncertainties, and imperfections in said bill of complaint contained, for answer thereto or to such parts thereof as they are advised is or may be necessary for them to answer unto, answering, say—

42 That they are informed and believe that complainants in said bill are and have been for some years past engaged in the business of buying and selling live stock, but deny that on or about the first day of October, A. D. 1885, or at any other time, the said complainants were the owners of 1,065 head of cattle which they shipped to these defendants, doing business under the firm name of Rappal, Sons & Co., to be sold on commission for the account of said complainants.

And deny that said cattle were received by these defendants, doing business as aforesaid, as commission merchants, to be sold for the account of said complainants on commission; and deny that the proceeds or any part thereof of the sale of any such cattle were to be held for the account of complainants, or that it became the duty of these defendants, doing business as aforesaid, to sell any such cattle for the account of the complainants at the Union Stock-Yards or elsewhere, or to hold any proceeds or any part thereof from such sale subject to the complainants' order, or to deliver any such proceeds or part thereof to the complainants.

And these defendants further deny that they, doing business as aforesaid, ever sold, at the Union Stock-Yards or elsewhere, for the account of complainants, said cattle for any sum or sums, and deny that any sum or sums arising from said sale or sales were deposited in the Union Stock-Yards National Bank with or without the consent of complainants.

43 And these defendants further deny that on the second day of October, 1885, they sold at the Union Stock-Yards, for the account of complainants, one hundred and thirty-three head of cattle for the sum of six thousand six hundred and forty-nine dollars and fifty cents, and deposited said sum or any part thereof with the Union Stock-Yards National Bank with or without the knowledge on the part of said bank that said sum or any part thereof belonged to said complainants.

And defendants further deny that on the third day of October, A. D. 1885, they sold for the account of complainants 810 head of cattle for the sum of $20,547.33 and deposited said sum or any part thereof with the Union Stock-Yards National Bank with or without the knowledge on the part of said bank that said sum or any part thereof belonged to said complainants.

And these defendants further deny that on the sixth day of October, A. D. 1885, they sold 122 head of cattle, for the account of complainants, for the sum of $2,568.52 and deposited said sum or any part thereof with the Union Stock-Yards National Bank with or without the knowledge on the part of said bank that said sum or any part thereof belonged to said complainants.

And these defendants, further answering, aver the fact to be that the cattle above mentioned, to wit, the 1,065 head aforesaid, were the property of W. P. Bowen & Co., live stock dealers, of Kansas City, Missouri, and that they were not in whole or in part the property of said complainants.

44

And these defendants, further answering, say that on the 1st day of October, A. D. 1885, said W. P. Bowen & Co. were indebted to these defendants in a large sum of money, to wit, twenty-nine thousand one hundred twenty-nine dollars and sixty cents as the result of several transactions in cattle; that said W. P. Bowen & Co. had been shipping to these defendants, through said complainants, sundry consignments of cattle, which were sold for the account of said W. P. Bowen & Co., and the commissions earned by these defendants in making the sale of said cattle were divided with said complainants in accordance with an arrangement made between these

defendants and said complainants; that out of the business dealings they had with W. P. Bowen & Co., through said complainants, said indebtedness of $29,129.60 accrued and was unpaid on the said first day of October.

And these defendants aver that each and all the shipments of cattle above particularly mentioned as having been received by them on the second, third, and sixth days of October, A. D. 1885, were the property of said W. P. Bowen & Co., and were consigned by said W. P. Bowen & Co., through said complainants, to these de-
45 fendants to be sold for the account of said W. P. Bowen & Co. in the same manner as all of the aforesaid assignments of cattle which had been received by these defendants, through said complainants, prior to said 1st day of October, and the sale of which by these defendants for said W. P. Bowen & Co. had resulted in the aforesaid indebtedness of said W. P. Bowen & Co., amounting to said sum of $29,129.60.

And these defendants aver that they rendered an account of sales of said cattle and of other cattle of said W. P. Bowen & Co., received throug- said complainants, to said complainants merely for the purpose of advising them, the said complainants, of the proceeds of sales, so that they might estimate and draw upon defendants for the part of the commission due from these defendants to said complainants, and not because they regarded the complainants as the owners of said cattle, and that these defendants credited the account of W. P. Bowen & Co. with the proceeds of such sales and, from time to time, rendered them an account thereof.

And these defendants further aver that they kept no other account with W. P. Bowen & Co. or of the proceeds of the cattle of W. P. Bowen & Co. shipped through said complainants than the one above mentioned, which shows said indebtedness, and that if the cattle shipped through the complainants to these defendants and by
46 said complainants designated as the cattle of W. P. Bowen & Co. were not the cattle of the latter, but the cattle of the complainants, then said complainants were indebted to these defendants, on the said first day of October, in a sum much in excess of the said sum of $24,257.21, and these defendants had the right to retain the proceeds of the sale of said 1,065 cattle, if they were the property of complainants, to apply on said indebtedness.

And these defendants aver that the names of said complainants used in connection with said account of sales of W. P. Bowen & Co.'s cattle were so used sole-y for the purpose of showing through whom said consignments of cattle were received, and not for the purpose of indicating in any manner that said cattle belonged to said complainants.

And these defendants aver that the only interest the said complainants ever had in said cattle or any of them or in the proceeds thereof was in the division of commissions earned by these defendants from the sale of said cattle at the Union Stock-Yards.

And these defendants, further answering, say that they did receive on the second, third, and sixth days of October, A. D. 1885, consignments of cattle, numbering, in the aggregate, 1,065 head,

from W. P. Bowen & Co., of Kansas City, Missouri, through
47 the complainants herein, with whom these defendants had the arrangement aforesaid in relation to the division of commissions, and that they sold said several consignments of cattle for the account of said W. P. Bowen & Co. and credited said W. P. Bowen & Co. with the net proceeds of said several sales, as they had the right to do.

And these defendants, further answering, say that they deposited the proceeds of said several sales with the Union Stock-Yards National Bank in the usual course of business, together with the proceeds of the sale of other cattle belonging to several different parties, and that they had no occasion to tell, and did not tell, said Union Stock-Yards National Bank, or any of the officers thereof, from what source any of the money so deposited came.

And these defendants, further answering, say that at the time of the commencement of this suit they were not indebted to said complainants in any sum whatever.

And, having fully answered the complainants' said bill of complaint, these defendants pray that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

FREDERICK J. RAPPAL,
LAWRENCE L. RAPPAL,
FREDERICK J. RAPPAL, JR.,
Per H. H. C. MILLER, *Their Sol'r.*

H. H. C. MILLER, *Solicitor.*

48 Endorsed: Filed July 16, 1886. Wm. H. Bradley, clerk.

49 On the same day, to wit, on the sixteenth day of July, 1886, came the complainants, by their solicitors, and filed in said clerk's office their replication to the answer of F. J. Rappal *et al.* in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

A. J. GILLESPIE, THOMAS E. GILLESPIE, and LOUIS J. GILLESPIE, Copartners, &c.,

vs.

UNION STOCK-YARDS NATIONAL BANK *et al.*

The replication of A. J. Gillespie, Thomas E. Gillespie, and Louis J. Gillespie, complainants, to the answer of Frederick J. Rappal, Lawrence L. Rappal, and Frederick J. Rappal, Jr., to the original and amended bill of complaint of said complainants.

These repliants, saving and reserving to themselves, now and at

all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendants, for replication
50 thereunto say that they will aver, maintain, and prove their bill and amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill and amended bill of complaint they have already prayed.

BISBEE, AHRENS & DECKER,
Solicitors for Complainants.

Endorsed: Filed this 16th day of July, A. D. 1886. Wm. H. Bradley, clerk.

51 Afterwards, to wit, on the eleventh day of October, in the adjourned October term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ANDREW J. GILLESPIE *et al.*
vs.
UNION STOCK-YARDS NATIONAL BANK *et al.* } In Chancery.

On motion of Peckham & Brown, it is ordered that fifty days' time be granted defendants in which to close their proofs.

52 Afterwards, to wit, on the twenty-seventh day of November, in the adjourned October term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ANDREW J. GILLESPIE *et al.*
vs.
UNION STOCK-YARDS NATIONAL BANK. } In Chancery.

The time for taking testimony in said cause is extended fifteen days from Monday, December twenty-seventh, 1886.

Afterwards, to wit, on the seventeenth day of May, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

A. J. GILLESPIE *et al.*
vs.
UNION STOCK-YARDS NATIONAL BANK. } In Chancery.

Now come the parties, by their solicitors, and, this cause being set for hearing this day, now comes on to be heard upon the pleadings and proofs; and, after hearing the arguments of counsel in part, it is ordered that further hearing herein be postponed until to-morrow morning.

53 Afterwards, to wit, on the eighteenth day of May, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

A. J. GILLESPIE *et al.*
vs.
UNION STOCK-YARDS NATIONAL BANK. } In Chancery.

Now again come the parties, by their solicitors, and this cause again comes on to be heard upon pleadings and proofs, and, after hearing additional arguments of counsel, it is ordered that further hearing herein be postponed until to-morrow morning.

Afterwards, to wit, on the nineteenth day of May, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

A. J. GILLESPIE *et al.*
vs.
UNION STOCK-YARDS NATIONAL BANK. } In Chancery.

Now again come the parties, by their solicitors, and this cause again comes on to be heard upon pleadings and proofs, and, after hearing the concluding arguments of counsel, the court takes the same under advisement.

54 Afterwards, to wit, on the twentieth day of May, 1887, there was filed in said clerk's office the opinion of Judge Gresham in said entitled cause; which said opinion is in the words and figures following, to wit:

Opinion.

In the Circuit Court of the United States, Northern District of Illinois.

GILLESPIE *et al. vs.* UNION STOCK-YARDS NATIONAL BANK *et al.*

Oral.

MAY 20TH, 1887.

Hon. WALTER Q. GRESHAM delivered the opinion of the court:

A. J. Gillespie, John F. Gillespie, and T. E. Gillespie, under the firm name of A. J. Gillespie & Co., were doing business as live stock commission merchants at Kansas City. They brought this suit in equity to recover the net proceeds of three consignments of cattle shipped by them from Kansas City to F. J. Rappal, Sons & Co., at Chicago. Rappal, Sr., selected the cattle at Kansas City, caused them to be weighed, and presented the weight tickets to Gillespie & Co., who paid for and shipped the cattle to Chicago. Two of the Gillespies swore that the contract with the senior Rappal was, that
Gillespie & Co. should ship the cattle as their own and
55 have control of them until sold at Chicago and paid for. In this they were fully corroborated by the witness James. The senior Rappal, on the other hand, swore that such was not the arrangement; that the agreement was that the Gillespies should furnish the money for the purchase of the cattle, which they did, and ship them as the property of Bowen & Co., and that the Gillespies should receive a specific amount per car for their advancements and trouble.

True, Rappal's two sons swore that the contract was as their father testified, but they admitted that all they knew of the agreement was what their father had told them. Thus, on this point there is a square conflict between the two Gillespies and James on one side and the senior Rappal on the other. The weight of the evidence on this point is against the senior Rappal, and his statement is improbable. It is hard to believe that Gillespie & Co. would furnish such large sums of money without any security, for that is what they did if they had not the right to control the cattle until they were sold. It is not claimed that the Gillespies had any security whatever for these large advancements unless the cattle were to be theirs or they had authority to control them until they were disposed of. I hold that the cattle belonged to the Gillespies or that the Gillespies were entitled to control them so far as necessary to protect themselves for advancements made on the purchases.

The first shipment arrived in Chicago on Friday morning.
56 Gillespie & Co. drew against this shipment and the draft was discounted by the Kansas City Bank. The Gillespies also drew against the two subsequent shipments, and these drafts were also discounted by the Kansas City Bank. This bank sent all the drafts to the Union Stock-Yards Bank for collection. The draft drawn against the first shipment was received by the Union Stock-

Yards Bank before or certainly as soon as the cattle were received. This draft was presented to the Rappals for payment; payment was refused, and the draft was protested. This was on Friday. No notice was given of this failure to pay for the first shipment or of the protest of the draft for at least twenty-four hours, perhaps more. The cattle were received here by the stock-yards company, they having been consigned to that company. By the weigh bills the consignee was directed to deliver the cattle to the Rappals, who received them and sold them at the stock-yards. As was usual, the cattle were weighed and the Rappals furnished with tickets showing the weight and price. These tickets Rappal, Sons & Co. delivered to the Stock-Yards Bank for collection. The bank made the collections and placed the amounts to the credit of Rappal, Sons & Co., who at this time were indebted to the bank on a past due note and for overdrafts. The bank then claimed against Gillespie & Co. that it had appropriated this money as a credit on the indebtedness of Rappal, Sons & Co.

A bank has a lien on the securities or funds of a depositor to the extent of any amount owing from him to the bank for overdrafts, past-due notes, or in other ways, but this is true only of
57 funds which belong to the depositor or debtor.

The stock-yards bank was familiar with the mode of doing business at the stock-yards. It knew that Rappal, Sons & Co. were engaged in receiving cattle from shippers and selling them at Chicago. When the bank received the ticket for the first shipment (and the other shipments were disposed of in the same way), showing the weight and price, it knew, of course, that the money called for by that ticket represented cattle that some one had shipped to Rappal, Sons & Co. for sale. If the bank did not know this the facts fairly put it upon inquiry, and it could and should have ascertained whether Rappal, Sons & Co. owned the cattle and the proceeds of their sale before appropriating them.

Furthermore, the failure or refusal of Rappal, Sons & Co. to pay the first draft, the bank knowing the business in which they were engaged, was notice to the bank that this firm was probably behind with some shipper—if, indeed, it did not know the shipper was Gillespie & Co.

Rappal, Sons & Co. being indebted to the bank for overdrafts and on past-due notes at the time the first draft was presented and protested for non-payment, it is safe to assume that the officers of the bank then did what business men would be expected to do under such circumstances. How natural that they should then say to Rappal, Sons & Co., "We want to know what this means. You are indebted to us. Explain this thing. Who shipped the cattle against which this draft was drawn? Under what circumstances were
58 they shipped to you? Is this your money, or is it the money of some one else?"

But, as already stated, it is not material whether at the time the bank claims to have appropriated the money it actually knew the relation that existed between Rappal, Sons & Co. and Gillespie & Co., for it knew too much to be permitted to make the appropriation

as against Gillespie & Co., who paid for the cattle and shipped them under the agreement already stated.

In view of Rappal, Sons & Co.'s indebtedness to the bank here, it is significant, to say the least, that it delayed for 24 hours or more to notify the bank at Kansas City, which had discounted the first draft and sent it to the bank here for collection, that the draft had been protested for non-payment.

The evidence shows that previously the bank here had never failed to send to the Kansas City Bank prompt notice by telegraph of failure or refusal to pay any draft which the latter had sent here for collection. This was the first failure on the part of the bank here to send immediate notice by telegraph to the Kansas City Bank in accordance with the latter's instructions.

The necessity for such notice was obvious. A draft was usually drawn against each shipment of cattle at Kansas City, and this draft was discounted by the bank there and sent to the bank here for collection. Prompt notice by telegraph to the Kansas City Bank of non-payment would afford the latter bank and the parties for
59 whom it had discounted the drafts opportunity to stop the cattle against which the drafts had been drawn by legal proceedings, if necessary, and thus prevent loss.

All shipments of cattle here are to the stock-yards company, and it may be that after the first draft had been protested an order from Gillespie & Co. to the stock-yards Co. not to deliver cattle to Rappal, Sons & Co. would have been sufficient for the protection of Gillespie & Co. without resorting to legal proceedings.

The president and cashier of the bank swore that it was not by their direction that the Kansas City Bank was not notified of the protest of the first draft, that prompt notice should have been sent by telegraph, and that the clerk whose duty it was to prepare such notices had neglected his duty. It is quite immaterial that the president and cashier did not know of the failure to send timely notice to the Kansas City Bank, as the neglect of the clerk was the neglect of the bank.

I do not mean to say, however, that the complainants could not recover if proper notice had been given of the protest of the first draft. It is proper to say that I have given credit to the testimony of the president and cashier.

The remaining question is, Can this suit be maintained on the equity side of the court?

I have had some misgivings on that point, but Judge Blodgett overruled the demurrer to the bill, and Insurance Company *vs.* Central National Bank, 104 U. S., seems to be authority for that ruling.

60 The decree will be for the amount of the net proceeds of these three shipments, with interest from the time of demand.

Endorsed: Filed May 20, 1887. Wm. H. Bradley, clerk.

61 Afterwards, to wit, on the twenty-fifth day of May, in the adjourned May term of said court, 1887, in the record of the pro-

ceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Decree.

A. J. GILLESPIE, THOMAS E. GILLESPIE, and LOUIS J. Gillespie, as Copartners, Composing the Firm of A. J. Gillespie & Co.,
vs.
THE UNION STOCK-YARDS NATIONAL BANK and Frederick J. Rappal, Lawrence L. Rappal, and Frederick J. Rappal, Jr., Copartners, Composing the firm of Rappal, Sons & Co. } In Chancery.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the defendant, The Union Stock-Yards National Bank, pay unto the complainants within ten days from date the sum of five thousand eight hundred and eighty dollars and twenty-five cents ($5,880.25), said sum being the net proceeds of one hundred and thirty-three (133) head of cattle belonging to the complainants and consigned by them to Rappal, Sons & Co. as live stock commission merchants, at the Union Stock-Yards, in Chicago, on the
62 thirtieth day of September, A. D. 1885, and which said one hundred and thirty-three (133) head of cattle were, on the second day of October, A. D. 1885, sold by the said Rappal, Sons & Co. for the complainants and the money deposited by them in the said Union Stock-Yards National Bank on that day, and which said sum is now on deposit in said bank; and that the said defendant, The Union Stock-Yards National Bank, pay unto the complainants within ten days from date the further sum of sixteen thousand five hundred and nineteen dollars and sixteen cents ($16,519.16), said sum being the proceeds of eight hundred and ten (810) head of cattle belonging to the complainants and consigned by them to Rappal, Sons & Co., as live stock commission merchants, at the Union Stock-Yards, in Chicago, on the first day of October, A. D. 1885, and which said eight hundred and ten (810) head of cattle were, on the third day of October, A. D. 1885, sold by them for the complainants and the money deposited by them in the said Union Stock-Yards National Bank on that day, and which said sum is now on deposit in said bank; and that the defendant, The Union Stock-Yards National Bank, pay unto the complainants within ten days from date the further sum of one thousand eight hundred and fifty-seven dollars and twenty-seven cents ($1,857.27), said sum being the net proceeds of one hundred and twenty-two (122) head of cattle be-
63 longing to the complainants and consigned by them to Rappal, Sons & Co., as live stock commission merchants, at the Union Stock-Yards in Chicago, on the third day of October, A. D. 1885, and which said one hundred and twenty-two (122) head of cattle were, on the sixth day of October, A. D. 1885, sold by them

for the complainants and the money deposited by them in the said Union Stock-Yards National Bank on that day, and which said sum is now on deposit in said bank, making the aggregate sum of twenty-four thousand two hundred and fifty-seven dollars and twenty-one cents ($24,257.21), with interest thereon from October sixteenth, 1885, amounting to the sum of two thousand three hundred and twenty-eight dollars and sixty-nine cents ($2,328.69), making a sum total of twenty-six thousand five hundred and eighty-five dollars and ninety cents ($26,585.90), and in default of such payments that the complainants have execution therefor, and also that the defendants pay to the complainants the costs of this suit, to be taxed by the clerk of this court.

As to all other defendants this suit is dismissed without prejudice.

From which decree the Union Stock-Yards National Bank prays an appeal to the Supreme Court of the United States, which is granted.

64 The said defendant has sixty days from this date to file a certificate of evidence and to file a bond in the sum of thirty-two thousand dollars. Upon the filing of such bond, approved by the court, it is to operate as a supersedeas; which bond is now filed and approved in open court.

65 On the same day, to wit, on the twenty-fifth day of May, 1887, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, The Union Stock-Yards National Bank of Chicago, as principal, and Samuel M. Nickerson, of said Chicago, as surety, are held and firmly bound unto A. J. Gillespie, Thomas E. Gillespie, and Louis J. Gillespie, of Kansas City, in the State of Missouri, in the full and just sum of thirty-two thousand dollars, to be paid to the said A. J. Gillespie, Thomas E. Gillespie, and Louis J. Gillespie, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, in a suit depending in said court between the said A. J. Gillespie and Thomas E. Gillespie and Louis J. Gillespie, on the one part, and The Union Stock-Yards National Bank of Chicago, Frederick J. Rappal, Frederick J.

66 Rappal, Jr., and Lawrence L. Rappal, on the other, a decree was rendered against the said The Union Stock-Yards National Bank of Chicago, ordering it to pay twenty-six thousand five hundred and eighty-five dollars and ninety cents ($26,585.90) and the costs of suit to the said A. J. Gillespie, Thomas E. Gillespie, and Louis J. Gillespie; and whereas the Union Stock-Yards National Bank of Chicago has prayed and been allowed an appeal from said

decree to the Supreme Court of the United States next to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said the Union Stock-Yards National Bank of Chicago shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE UNION STOCK-YARDS NATIONAL
BANK OF CHICAGO, [SEAL.]
By ELMER WASHBURNE, *President.* [SEAL.]
SAM'L M. NICKERSON. [SEAL.]

Sealed and delivered in presence of—
EDWARD O. BROWN.

Approved:
W. Q. GRESHAM, *Circuit Judge.*

Endorsed: Filed May 25, 1887. Wm. H. Bradley, clerk.

67 On the hearing of said cause, on the same day, to wit, on the twenty-fifth day of May, 1887, the certificate of evidence in said cause was filed in said clerk's office, and is in the words and figures following, to wit:

Certificate of Evidence.

In the United States Circuit Court for the Northern District of Illinois.

A. J. GILLESPIE, THOMAS E. GILLESPIE, and LOUIS J. GILLESPIE
vs.
THE UNION STOCK-YARDS NATIONAL BANK OF CHICAGO, FREDERICK J. RAPPAL, FREDERICK J. RAPPAL, Jr., and LAWRENCE L. RAPPAL.

This is to certify that upon the hearing of the above-entitled cause upon the bill, answers, replication, and evidence the following evidence was offered:

68 *Testimony Taken before E. B. Sherman, Master in Chancery o said Court.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

ANDREW J. GILLESPIE, THOMAS E. GILLESPIE, and Louis J. Gillespie, Copartners Composing the Firm of A. J. Gillespie & Co.,
v.
THE UNION STOCK-YARDS NATIONAL BANK. } Bill.

ANDREW J. GILLESPIE, THOMAS E. GILLESPIE, and Louis J. Gillespie, Copartners Composing the Firm of A. J. Gillespie & Co.,
v.
THE UNION STOCK-YARDS NATIONAL BANK, F. J. RAPPAL, L. L. RAPPAL, and F. J. RAPPAL, Jr. } Amended Bill.

JULY 16TH, 1886.

Present: L. H. Bisbee and Mr. Wright, for complainants, and Edward O. Brown and H. H. C. Miller, for defendants.

69 GEORGE E. CONRAD, being first duly sworn, testified on behalf of complainants as follows:

By Mr. BISBEE: State your full name.
A. George E. Conrad.
Q. What is your business?
A. Cashier of the Union Stock-Yards National Bank.
Q. Said bank is one of the defendants in this action, is it, Mr. Conrad?
A. I believe so; yes, sir.
Q. How long have you been such cashier?
A. About a dozen years, I guess.
Q. Where is said bank located?
A. Town of Lake, Cook county, Illinois.
Q. At what we call the Union Stock-Yards?
A. Union Stock-Yards; yes, sir.
Q. Said bank is a national bank, is it?
A. Yes, sir.
Q. Are you acquainted with F. J. Rappal and F. J. Rappal, Jr., and L. L. Rappal, composing the firm of Rappal, Sons & Company?
A. I am.
Q. How long have you known said parties?
A. I don't just remember how long they have been in business there; ever since they have been in business; I should say 4 or 5 years.
Q. In what business was the firm of Rappal, Sons & Company engaged?
A. In the commission business—live stock commission.

Q. Where was their office?
A. In the exchange building.
Q. Where is your office—the banking office?
A. In a separate building, alongside of the other.
70 Q. How far is your banking office from that of Rappal, Sons & Company?
A. Well, you mean at the time they were — or their present office.
A. I mean in October, 1885?
A. I should say 400 or 500 feet.
Q. Did the firm of Rappal, Sons & Company keep an account with the Union Stock-Yards National Bank in the year 1885, and up to as late as October 10th, 1885?
A. They did up to some time in October—after the first of October; I don't remember how late.
Q. When was that account opened in your bank?
A. I couldn't tell you without referring to the books; some 4 or 5 years before, I should say.
Q. Have you with you your customers' balance book, kept in said bank?
A. Yes, sir.
Q. Please produce said book and state what Rappal, Sons & Company's balance was, if any, on the first day of July, 1885.

Counsel for the Union Stock-Yards National Bank desires an objection noted that the line of questions is calling for irrelevant testimony.

A. Rappal, Sons & Company on the 1st day of July were overdrawn $6,584.08.
Q. Did Rappal, Sons & Company owe the bank anything else at that time?
A. That I can't tell you; don't have any books here to show that; very likely they had; might have had a loan, or something of that kind; if they did they had additional security for it.
Q. Represented by notes?
A. Notes and collateral; yes, sir.
Q. What was the balance, if any, of Rappal, Sons & Company in your bank on the 21st day of July, 1885, as appears by the customers' balance book?

It is stipulated that all questions propounded by counsel for complainants to this witness may be considered as answered under
71 the objection of counsel for the Union Stock-Yards National Bank for irrelevancy, and also of counsel for Rappal, Sons & Company.

A. Balance of 21st of July was $6,435.79 overdrawn.
Q. You may state the condition of Rappal, Sons & Company's account on the first day of August, 1885, with your bank.
A. Overdrawn $15,703.33.
Q. At that time did Rappal, Sons & Company owe the bank anything for any other account than their overdraft?

A. Well, I have no memoranda of that; they may have had some notes, but, as I say, if they owed anything else it was something entirely separate, on collateral; this was on running account.

Q. You have no recollection?

A. No; I have no recollection.

Q. You may state what the condition of Rappal, Sons & Company's account was with the bank of the 15th day of August, 1885.

A. August 15th it was $7,919.89 overdrawn.

Q. You may state what the condition of Rappal, Sons & Company's account was on the first day of September, 1885.

A. Overdrawn $3,759.63.

Q. You may state what the condition of Rappal, Sons & Company's account was with your bank on the 10th day of September, 1885.

A. $4,785.12 overdrawn.

Q. And also what was it on the 15th of September?

A. Overdrawn $17,722.40.

Q. What was the condition of that account on the 21st of September?

A. The 21st it was overdrawn $23,968.43.

Q. What was it on the 25th day of September?

A. Overdrawn $15,731.24.

Q. What was it on the last day of September, the 30th?

A. Overdrawn $15,118.62.

72 Q. You may now give the condition of the account each day from October 1st to October 10th, inclusive, giving each day, commencing on the first of October.

A. October 1st, overdrawn $18,922.21; October 2nd, overdrawn $18,454.89; October 3rd, $1,136.03, balance.

Q. Credit balance?

A. Credit balance.

October	5th,	credit	balance	$47	73
"	6th,	"	"	2	89
"	7th,	"	"	2	89

That appears to have been checked out; that is all there was—the end of the account.

Q. That is the end of the account, you say?

A. Yes, sir; no other account.

Q. No other account?

A. That closed that account.

Q. You may state if there was any time between the first day of July, 1885, and October 3rd, 1885, that the firm of Rappal, Sons & Company had a credit balance in your bank; if so, state what days they had such credit balance, and how much it was.

A. July 23rd, a credit balance of $1,351.80; August 27th, a credit balance of $4,093.91; August 28th, a credit balance of $387.96; September 3rd, a credit balance of $4,935.91. That is all up to October 3rd.

Q. Did the firm of Rappal, Sons & Company owe your bank any-

thing outside of this draft on the 1st day of October, 1885; if so, how much, and what for, and how was it represented?

A. I don't recollect anything else, except they may have had some notes there, but those, I say, were secured. They owed us nothing except this running account.

Q. Have you any books with you that shows any notes they had there?

A. No, sir; I have not.

73 Q. Have you got the individual journal of your bank showing the account for the first days of October, the individual deposits of Rappal, Sons & Company?

A. Yes, sir.

Q. You may state what, if any, deposits were made in your bank by Rappal, Sons & Company on the 2nd day of October, 1885?

A. Deposit on the 2nd day of October, 1885, of $6,70^{8}$ 84.

Q. Have you the items of it or only the gross amount in your book?

A. It appears to have been made only in one deposit. There is one deposit slip; don't know what that was made of.

Q. Your books don't show the items?

A. The items—no, sir; only the total.

Q. Only the total?

A. Yes, sir; one deposit.

Q. Have you the slip or is the slip in the possession of the bank at the stock-yards?

A. Yes, sir.

Q. And the reason it is not here is because you were not subpœnaed to bring it?

A. No, sir; not asked to bring it.

Q. You say that you have nothing with you, then, from which or by which you could show the separate items that made the aggregate of the deposit of that day?

A. No, sir; entered in one amount on the journal.

Q. You may give the deposits made by Rappal, Sons & Company in your bank on the 3rd day of October, 1885.

A. Appears to be three deposits. Give each separate?

Q. Yes; each one separate.

A. $7,574.43 and $2,660.40 and $13,056.00.

Q. What is the aggregate of those three items?

A. $23,290.83.

74 Q. You may state how those three deposits were made in your bank on that day—I mean whether scale tickets, checks, or currency.

A. I haven't any idea; made up of everything; probably checks, currency tickets, the usual deposits; I don't know what they were.

Q. Can you state whether any of those deposits were made in duplicate scale tickets, as known at the yards?

A. I couldn't tell you.

Q. Have you any memoranda in the bank by which you can ascertain that fact?

A. I don't think we could with any certainty, because those are

entered on the deposit ticket, the separate amounts, and I don't think there is any item to show; may be a memorandum on the deposit ticket showing what they are, but usually they don't put anything of that kind on.

Q. The 4th of October was Sunday?

A. Yes, sir.

Q. What deposits were made on the 5th by Rappal, Sons & Company?

A. One deposit of $6,444.62.

Q. You may state what were made, if any, on the 6th of October, 1885.

A. Two deposits—$7,596.37 and $2,583.52; aggregate, $10,179.89.

Q. What deposits were made on the next day, the 7th, if any?

A. No deposits.

Q. Were any deposits made in that bank by Rappal, Sons & Company after the 6th of October, 1885?

A. Deposits on October 8th of 26 cents.

Q. Was there any deposits after the 7th of October excepting the 26 cents which you have just given?

A. On October 9th a deposit of $4,006.73.

Q. How was that deposit made?

A. In the usual way.

Q. What was the transaction itself?

A. Well, I can't tell you only by the books here.

Q. Didn't you take a note of one of the Rappals or the firm on that date?

75 A. I couldn't tell you; no way of fixing it.

Q. Didn't you take a note secured by a mortgage on some land in Will county on that date?

A. That I can't tell you.

Q. Have you any recollection in relation to it?

A. There was a note; don't think there was any note taken; don't remember about that; they gave a note, I think, something of that kind.

Q. Was any mortgage given to the bank?

A. I didn't see any mortgage; didn't see the papers.

Q. Do you know what that item is, as a matter of fact?

A. No; I do not, only what I see here; didn't know it was here till I saw it, and they seem to have deposited in a check the same amount—$4,006.73.

A. You say a deposit and a check for the same amount?

A. $4,006.73.

Q. And that balanced the account?

A. Yes, sir; the account balanced.

Q. Now, was not that last item you have named, the note taken by your bank from the Rappals for the balance they owed you, secured by the mortgage, and was it not entered in your books to balance the account in that way?

A. That I don't know; I haven't any idea of that.

Q. You have no knowledge about it?

A. No knowledge of it; no, sir.

Q. Have you any information as to what that deposit was?

A. No, sir; I have not.

Q. Neither from the books nor from checks?

A. I have no recollection.

Q. Can you state what amount the Rappals or either of them owed your bank at any time between the first of October and the 9th of October that was represented by note or draft or in any other form than overdraft?

A. No, sir; I have no recollection.

Q. Don't you know that on the 2nd day of October, 1885,
76 besides the $18,000 and odd dollars that Rappal, Sons & Company were overdrawn at your bank, they were owing you some other sums of money?

A. Well, I think they might have had some notes there, but if they did there was collateral connected with it; I don't remember anything about it; don't remember the amount.

Q. Do you remember what collateral there was?

A. There were notes—something of that kind—I remember; they have had notes on deposit there to secure their overdrafts and accommodation granted them.

Q. You can't state when or how much?

A. I haven't looked that up and don't remember.

Q. Have the checks drawn by Rappal, Sons & Company all been returned to them?

A. Yes, sir; I suppose so—that is, I don't know it; but it is our custom to return them about once a month—write up the books and give the checks back.

Q. You have no knowledge of having any of them in your possession?

A. No, sir.

Q. Do you recollect of having any settlement with Rappal, Sons & Company between the first and 10th of October, 1885?

A. How do you mean a settlement?

Q. With their account with you.

A. Nothing more than in their account they make their deposits and draw their checks; we have nothing to do; no settlement made.

Q. You made no settlement with them?

A. Not that I remember.

Q. You took no security from them between those two dates, did you?

A. Not that I remember.

Q. You have no recollection of any?

A. No.

Q. Did you take any notes of them between the first and 10th?

A. Well, I don't recollect of any; if there were some I didn't do it myself.

Q. Do you recollect of there being any note in the bank
77 from them, made about that time?

A. No, sir; I do not.

Q. You haven't known of any such paper since the time that we are inquiring about?

A. I don't think I have any personal knowledge of it; I don't remember.

Q. If there was any note who would do the business with the bank?

A. Well, Mr. Washburn or myself.

Q. It would be either you or Mr. Washburn?

A. Yes, sir.

Q. I now show you a draft drawn on A. J. Gillespie & Company, dated at Kansas City, Missouri, on the 30th day of September, for $6,231.10, calling for payment to P. Connelly, cashier, said sum of money, directed to Rappal, Sons & Company, Union Yards, Chicago, Illinois, which appears to have been protested on the 2nd day of October, 1885, by Charles Jameson, notary; I ask you if you ever saw that draft before.

A. No, sir; I have no recollection of it.

Q. Did that draft come to your bank for collection?

A. Well, I can answer from the endorsements, and so on, and that protest, that it did; that is all.

Q. When was that draft deposited with your bank for collection?

A. The protest shows it was received on the 2nd day of October.

Q. Was it protested by a notary in your office?

A. Yes, sir.

Q. Your banking office?

A. Yes, sir.

Q. Was that draft presented for payment?

A. Yes; there is a memorandum on the back that shows it was.

Q. Who presented it?

A. Mr. Jameson presented it and made the memorandum on the back.

Q. Who is Mr. Jameson? What is his relation to your bank?

A. Assistant cashier.

Q. Of your bank?

A. Yes, sir.

Q. I now show you a draft dated October 1st, 1885, at
78 Kansas City, Missouri, drawn by A. J. Gillespie and Company for $19,505.62, payable to the order of P. Connelly, assistant cashier, on demand, directed to Rappal, Sons & Company, Union Yards, Chicago, Illinois, which appears to have been protested on the 5th day of October; I will ask you if you ever saw that draft before.

A. Yes, sir; I have seen that one.

Q. When and where did you first see it?

A. I saw it when it came there; at least when it was presented and payment refused on it.

Q. When did that draft reach your bank?

A. It came Monday, the 5th of October.

Q. It came on that day, you say?

A. That is my recollection of it.

Q. In the morning?

A. Yes, sir; I think so.

Q. When was it presented, if at all, for payment?

A. Presented along about noon with the rest of the drafts.
Q. When it was presented was it paid?
A. No, sir; payment refused.
Q. Who presented it?
A. Well, I presume it was presented in the regular course of business; I don't remember.
Q. It was protested on that day?
A. Protested on that day.
Q. Why do you say that draft was received by you on the 5th day of October when it is dated on the 1st?

(Objected to by counsel for the bank.)

A. Saturday would be the—we close at 1 o'clock on Saturday; might have been received late in the afternoon on Saturday.
Q. Have you any recollection?
A. I have no recollection; were treated as usual course of business.

79 Q. When in fact was that draft received at your bank?
A. I can't say; I should say on Monday.

By Mr. BROWN: Questions objected to upon the ground that complainants' counsel have no right to cross-examine their own witness.

Q. Do you in fact know when it was received?
A. Not positively; no, sir.
Q. How long does it take a draft to come from Kansas City Stock-Yards to your bank at the Union Stock-Yards, Chicago?
A. That I can't answer definitely. I should say we should receive it on the second day after.
Q. After it was drawn?
A. I don't know positively.
Q. After it was made, then, have you any record in your bank showing the date of the time drafts that are drawn on your bank are received?
A. They are entered on the collection book the day they are received.
Q. On your collection book?
A. Yes, sir.
Q. That collection book you have not with you?
A. No, sir.
Q. It is at the bank?
A. Yes, sir. Everything that comes after 3 o'clock, of course, after banking hours, we don't present those the same day.
Q. I now show you a draft, dated at Kansas City, Missouri, October 3rd, 1885, for $691.70, drawn by A. J. Gillespie & Company, payable to the order of P. Connelly, assistant cashier, at sight, directed to Rappal, Sons & Company, Chicago, Illinois. I ask you if you ever saw that draft before?
A. Well, I don't know that; I have no recollection of seeing it; probably I did.
Q. Was that draft received by your bank for collection?
A. The protest and papers on it show it was.

80 Q. When was it received?
A. I have no recollection of when it was received.
Q. Well, in the course of business, when was it received?
A. It was received on the same day it was protested, which was on the 5th. I should say that was received on the 5th.
Q. Were the last two drafts shown you, one dated October 1st and one dated October 5th, protested at the same time?
A. Yes, sir; protested at the same time.
Q. Was that last draft shown you presented to Rappal, Sons & Company for payment by your bank?
A. By the notary.
Q. What notary?
A. By Mr. Jameson.
Q. He, you say, was the assistant cashier of your bank?
A. Yes, sir; that is his memorandum on there. That is all I have to go by.
Q. You may state how drafts are forwarded to you for collection by the Kansas City Stock-Yards Bank.
A. They are forwarded by mail.
Q. Directed to your bank?
A. Yes, sir.
Q. They don't go through any third party's hands, do they?
A. No, sir.
Q. How long have you been doing business with the Kansas City Stock-Yards Bank?
A. Several years. I don't remember the time.
Q. Doing about what amount of business?
A. Well, business varies; sometimes might be a few drafts, sometime 40,000 or 50,000 a day.
Q. A few drafts a day or $40,000 or $50,000?
A. Amounts vary according to the seasons of the year.
By Mr. BROWN: State what you mean as to amounts; when you say might be few drafts you mean it might be so small——
81 A. A few dollars or $50,000. You see, business varies when making heavy shipments. They usually send us all their collections.
By Mr. BISBEE: And you have done so for several years last past?
A. Yes, sir.
Q. What was your custom with that bank in relation to notifying them by telegram or otherwise of the non-payment of a draft?
A. We had orders from them to telegraph them of non-payment.
Q. You did have orders?
A. Yes, sir.
Q. Did you in this instance have orders to telegraph them?
A. No, sir. I don't know as there were any special instructions in regard to this.
Q. But generally did you have such orders?
A. Had general orders.
Q. Did you telegraph the non-payment of these drafts to that bank?

A. My recollection is that this first draft was telegraphed on the next day, the next morning.

Q. After its protest?

A. Yes, sir. Our usual custom has been with these drafts if they are presented for payment and payment refused —. They would be paid next morning, a good many of them, and for some reason the notary omitted to telegraph, I think, the same day, on the second; am not sure whether the telegram went on the 2nd or not; at least, the telegram was sent the next morning.

Q. How in relation to the draft dated October 1st?

A. The others were regularly telegraphed.

Q. When did you telegraph the non-payment of the two last drafts?

A. On the day the payment was refused.

Q. On the 5th?

A. I think so; yes, sir.

Q. When did you telegraph the Kansas City Stock-Yards
82 Bank that the draft dated October 30th was not paid?

A. My recollection is that it was telegraphed the morning of the 3rd.

Q. Morning of October 3rd?

A. My attention was called to the draft, as I recollect it now, and I inquired whether a telegram had been sent advising the non-payment of it, and couldn't find that it had, and I sent one.

Q. When did you telegraph the Kansas City Bank that the draft dated October 1st for $19,505.62 was not paid?

A. My recollection is it was telegraphed the first thing when they refused payment.

Q. Well, when?

A. I should think Monday morning; usually, don't telegraph these till late in the afternoon.

Q. You say that was telegraphed on Monday, the 5th?

A. Yes, sir; in the morning.

Q. Have you any definite knowledge on that subject? Have you looked it up so as to know?

A. I did look it up at one time, but it is some time ago. That is my recollection of it; am quite positive about it. I telegraphed Mr. Connelly, and he — me a number of times in regard to it during the day.

Q. State when you telegraphed the Kansas City Bank that the draft of October 3rd was not paid.

A. Those were both in one telegram—the 19 and the 600.

Q. You have testified that on the 3rd of October Rappal, Sons & Company deposited in your bank $23,290.83. Did you telegraph the Kansas City Bank before that deposit was made in your bank that these two large drafts were not paid?

A. I don't know that; the deposits and the telegram had no connection whatever. I have no recollection of it. I know that
83 I telegraphed Mr. Connelly as soon as I found out the drafts were not going to be paid.

Q. Did you telegraph Mr. Connelly, of the Kansas City Stock-

Yards Bank, that those two drafts were not paid before that 23 thousand and odd dollars were deposited in your bank?

A. I have no idea when the deposit was made; don't know anything about it.

Q. Haven't you testified that it was made on the 3rd of October?

A. Yes, sir; that was made on Saturday; that deposit.

Q. So you didn't telegraph the non-payment of these drafts to Mr. Connelly until after that deposit was made?

A. But we didn't have the drafts——

Q. No; but answer my question, won't you?

By Mr. BROWN: Counsel for the bank objects to the counsel for complainant cross-examining his own witness.

A. No; I didn't telegraph him until after the deposits were made, because they were made on Saturday and the drafts didn't come till Monday.

Q. That is, you didn't telegraph till Monday that they were not paid?

A. How could I if I didn't have it?

Q. You are, then, prepared to state that that $19,000 draft didn't reach you till Monday?

A. Didn't have it in the regular course of business until Monday.

Q. You did state awhile ago, however, that you didn't know when it was received by the bank?

(Objected to.)

A. I say there is a possibility that that draft might have come in after our business hours on Saturday, but don't think we got it till Monday.

Q. Will you produce before the master here to-morrow morning the collection memorandum register—if that is the proper
84 name—or the register showing the time when drafts are received?

A. The register won't show the time they are received; we don't keep a memorandum of that. We collect for all banks in the city; — send us all their collections, and our book or register wouldn't show the time they are received. The mail is opened by Mr. Jameson or myself, and drafts checked off and passed over to the note teller; he immediately puts them on his book. If any collections come to us in the mail which comes about half past three, after business is all over, don't present those till next morning; don't make any difference whose they are.

Q. Will you produce that draft register Saturday morning?

A. Yes, sir.

Q. You have such a register and will produce it?

A. Have a memorandum book where drafts are entered from the different banks.

Q. Will you please produce your bills receivable book or account showing any note that you may hold of Rappal, Sons & Company between July 1st and October 10th, 1885, and also the deposit tickets

or slips showing items of deposit between October 1st and 10th, 1885, inclusive, of Rappal, Sons & Company?

A. I will produce them.

Q. You have copies of the telegrams that you sent to the Kansas City Stock-Yards Bank in relation to these three drafts shown you?

A. Well, that I can't say; the telegrams are usually copied, but I don't know whether all of them were copied or not.

Q. Will you produce such copies as you have in relation to those three drafts?

A. Yes, sir.

Q. Have you the original telegrams received by you from the Kansas City Stock-Yards Bank in relation to these drafts?

85 A. I can't say as to that; I suppose they are filed away.

Q. Will you look them up and produce them with the other papers?

A. Yes, sir.

Q. When a draft is sent to you for collection by the Kansas City Stock-Yards Bank, like the three I have shown you, is there a letter accompanying it?

A. Yes, sir.

Q. Do you preserve those letters?

A. I presume so.

Q. Will you please produce the letters accompanying the three drafts shown you from said bank and any other correspondence of the bank concerning them?

A. Yes, sir.

Q. When letters are sent by the Kansas City Stock-Yards Bank to your bank do you not usually receive them the next day after said letters are sent?

A. I don't remember the time; they are received in the usual course of mail; that is all I can say.

Q. You may state why it was that you extended so large and so long an overdraft to Rappal, Sons & Company.

(Question objected to by Mr. Brown.)

A. Because they always had cattle coming in or on the road and wanted accommodations over night to pay their drafts that were made on shipments of stock, and stock usually coming from the West wouldn't arrive till the next day or the day after; 2 or 3 days sometimes.

Q. Did you have any arrangement with them about allowing them to overdraw; if so, to what amount?

A. I don't know as there was any particular amount specified; they gave us collateral and we allowed them to overdraw.

Q. They gave you collateral for these overdrafts—all of

86 them that you have named?

A. We always had collateral of theirs on hand and always accommodated them the same as other firms.

Q. Where did you have collateral to secure you for the overdrafts of Rappal, Sons & Company?

A. I don't remember where they were.

Q. Did you have them?
A. Yes, sir; we had notes.
Q. To what extent?
A. I don't know; couldn't tell you.
Q. Did you use those notes in paying this overdraft?
A. No; no occasion to.
Q. You did not use them. What did you do with them?
A. May have given them up; I don't remember.
Q. They were returned to Rappal, Sons & Company, were they?
A. I can only state that my impression was that they had collateral there; what that was I couldn't say.
Q. Were they returned to them about the time this account was closed, in October?
A. That I couldn't say.
Q. You don't know when they were?
A. No, sir; I do not.
Q. And don't know the amount of them?
A. No, sir.
Q. But you think they were returned?
A. I think—well, I suppose they were; I don't know; we haven't anything on hand now that I know of.
Q. Have you got those collaterals yet?
A. No, sir.
Q. Have you had any since the 10th of October, 1885?
A. I don't know of any.
Q. Have you had any business connections with the firm since then?
87 A. I don't know of any; don't remember.
Q. How did it happen that the account was closed on the 9th of October, 1885?
A. They made a deposit as they usually did.
Q. So that ended the account?
A. They closed it themselves; we had nothing to do.
Q. You didn't ask that it be closed?
A. Don't remember that we did say anything about it.
Q. If you state as you have that you didn't know anything about those collaterals can you state positively that you haven't got any now?
A. No, sir; I can't state we haven't any now.
Q. You don't know what you have got?
A. I don't think I ever saw them.
Q. Will you refresh your recollection from the books at the bank and at your next sitting state all the collaterals that you held from Rappal, Sons & Company and all bills receivable of any kind or nature between July 1st and October 10th, 1885, and state what they were and what has become of them?
A. No record made of anything of that kind; don't keep a record of these things.
Q. Do you keep a record of notes?
A. If they leave collaterals with us they are simply put on file.
Q. There is a full record of bills receivable?

A. Of our bills receivable?
Q. Yes.
A. Yes, sir.
Q. Haven't you any memorandum which would show collaterals left?
A. No, sir.
Q. Did you ever protest any of Rappal, Sons & Company's paper at any time between July 1st and October 10th, 1885?
A. I couldn't tell you about that. We have protested paper
88 for nearly every firm up there when we didn't want to pay it; don't remember of any of theirs protested.
Q. You don't remember of any, you say?
A. No, sir.
Q. Between October 1st and October 10th were there any other drafts drawn on Rappal, Sons & Company through your bank that went to protest, except the three now shown you and which have been identified?
A. I haven't any recollection of any.
Q. Do you remember of a check being drawn by Rappal, Sons & Company upon your bank to pay the freight upon the cattle shipped by A. J. Gillespie & Company the last of September or the first of October, 1885, and said check being protested?
A. No, sir.
Q. Have you any recollection of a protest of a check paid to the stock-yards company for freight?
A. No, sir.
Q. You have no recollection?
A. I have not; no, sir.
Q. Or did you refuse payment of any such check or any check?
A. I have no recollection of it.
Q. Did you ever refuse payment of any check drawn by Rappal, Sons & Company?
A. That I couldn't say.
Q. Have you any recollection of any?
A. No, sir; I have no recollection.

89 JULY 16TH, 1886.

ELMER WASHBURN, being first duly sworn, testified on behalf of complainants as follows:

By Mr. BISBEE: How long have you been president of the Union Stock-Yards National Bank?
A. Three years last December; 12th of December, I think.
Q. How generally do you take charge of its affairs?
A. That is a difficult question to answer.
Q. Are you there every day?
A. Yes, sir.
Q. Prior to October, 1885, did you know the members of the firm of Rappal, Sons & Company?
A. I did.
Q. Did you know they had an account in your bank?
A. I did.

Q. Did you know the condition of it between July 1st and October 10th, 1885?

A. In general terms.

Q. Was it your custom to look over the balances of your customers to see how they stood from day to day?

A. It was, occasionally.

Q. As often as once a week or oftener?

A. Yes, sir.

Q. And did you observe the condition of that account as it stood from day to day between the first of July and October 10th, 1885?

A. I did not, from day to day, as far back as that.

Q. About what knowledge did you have? State in your own words.

A. I knew in general terms how the account stood.

Q. And it did stand as has been testified by Mr. Conrad, your cashier, didn't it?

A. I can't say as to that; he has to testify from the books; I could do the same; that would be my source of positive and definite knowledge. I may say that I have an overdraft list every morning and look it over.

Q. Put on your desk?

90 A. On my desk; and if there is an account overdrawn I know the condition of it. If there is an account with a credit balance I don't know the exact condition of it, unless I go to the balance sheets to see.

Q. Then did you know from day to day, between the dates above named, that Rappal, Sons & Company's account was generally overdrawn, did you?

A. Frequently overdrawn.

Q. Wasn't it generally overdrawn between those dates?

A. I hardly know how to define between generally and frequently. We extended a pretty good credit to Mr. Rappal.

Q. What was the condition of Rappal, Sons & Company's account with you on the 1st day of October, 1885?

A. I don't know.

Q. You may refer to the books on that question.

A. The 1st day of October, 1885, overdrawn, $18,922.21.

Q. What was the condition of that account on the 2nd day of October, 1885?

A. $18,454.89 at the close of business.

Q. What time does business close each day at the bank?

A. Three o'clock; Saturday, at 1.

Q. What was the condition of that account on the 3rd day, at the close of business?

A. A credit balance of $1,136.03.

Q. Do you remember the circumstances of that account being closed at your bank, Mr. Washburn?

A. I remember something in connection with it.

Q. State when it was closed.

A. I can't state from recollection. It would seem to have been closed on the 7th day of October, from this balance sheet.

Q. That is, the balance sheet ends the 7th of October?
A. Yes, sir.
Q. You may state what the customers' journal shows in
91 relation to any business done with Rappal, Sons & Company after October 7th, 1885.
A. On the 9th of October — shows a debit and credit of $4,006.73.
Q. What were those items?
A. I don't know, sir; don't know and can't tell from that book.
Q. Have you any recollection about them whatever?
A. Nothing that I would feel justified in testifying.
Q. Did you take a note of Rappal, Sons & Company on the 9th of October for that amount of money?
A. I don't know.
Q. Do you know that you didn't?
A. I do not know that I did not.
Q. Who did the business—what person connected with your bank—when the account was closed?
A. I did it.
Q. Did Rappal, Sons & Company owe you any money on the 9th of October or 8th of October?
A. I don't know.
Q. Did you take their note for any sum of money about that time?
A. Yes, sir; I did.
Q. How much money?
A. Don't remember.
Q. State what you did in settling up the account.
A. We took a note from Mr. Rappal.
Q. For how much or about how much?
A. I don't remember; the best of my recollection is they owed $6,000.
Q. You took the note as balance due you?
A. Yes, sir.
Q. Balance he owed you?
A. I can't tell in what form they owed it.
Q. Was that note secured?
A. Don't remember whether there were other bills receivable.
Q. Was that note secured in any way?
A. It was.
Q. How was it secured?
A. By real estate.
92 Q. Where?
A. Will county.
Q. Has that note been paid?
A. In part.
Q. And in part unpaid?
A. In part unpaid.
Q. You still hold the note?
A. We do; the bank does.
Q. When I speak of you I mean the bank; and that note was given

to your bank to close up or in payment of the balance they owed you, was it—that the firm owed you?

A. The balance the firm owed us in some manner or form.

Q. And that closed up the account, did it—ended the account?

A. It must have done so, I think.

Q. You had no further banking business with Rappal, Sons & Company?

A. I think not; don't know what the books might show farther on.

Q. You have no recollection of any business having been done with them?

A. No, sir. I can't testify that they didn't do any more business or that we didn't do any more business with them as Rappal, Sons & Company. I can't testify from recollection.

Q. When you learned that Rappal, Sons & Company were overdrawn, on the 2nd of October, $18,000 and odd did you take any action or do anything towards getting that overdraft paid?

A. Don't remember that I did.

Q. Did you notify them of that overdraft or send for them or write them or have any communication with them in relation to it?

A. I can't testify from recollection.

Q. You have no recollection about it, have you?

A. As I have testified, they were frequently overdrawn.

Q. Did the firm of Rappal, Sons & Company owe you any other amount on the 2nd of October than what appears in the overdraft?

93 A. They probably owed us something in bills receivable.

Q. Do you know how much?

A. I can't testify from recollection.

Q. Have you any idea—can you give any estimate—of how much they owed you?

A. Well, the best answer I could give—the safest one—would be to say they were inside of $10,000 in bills receivable.

Q. What security did you have for that?

A. The amount may not have been so large as that; may not have been over $5,000 or $6,000.

Q. That was exclusive of overdrafts, whatever it was?

A. Yes, sir.

Q. Did you have any security?

A. I don't want to be understood as giving anything like positive testimony.

Q. We don't understand it so, Mr. Washburn. You can correct it any time you want to. Did you have any security for the overdraft of $18,000 and the indebtedness represented by bills receivable, whatever they were?

A. I think we had some feeders' paper or farmers' paper to secure bills receivable.

Q. To what extent?

A. I don't remember.

Q. Did you realize anything out of those collaterals?

A. Out of some of them.

Q. How much?
A. I don't remember.
Q. Can you approximate the amount you realized out of those collaterals?
A. No; I can't.
Q. When did you realize it?
A. I don't remember that.
Q. You can't give any amount that you realized from feeders' paper?
A. No; for I don't remember, and can't say we realized anything from it; may have been all turned back to Rappal—it may have been.
94 Q. Was that all turned back to him when he gave this mortgage on the Will county land to secure your note?
A. I don't remember about what time that was done.
Q. Is that your best impression or recollection—that they were turned back at that time?
A. That would be my best recollection; yes, sir.
Q. But you can't state the amount of those collaterals?
A. No, sir.
Q. Or whether or not you ever realized anything from them, can you?
A. Not positively.
Q. And you don't know of any other collaterals excepting that paper that you had for this indebtedness?
A. No, sir.
Q. How long had you carried those bills receivable against Rappal, Sons & Company which you say would probably not exceed $10,000, but the amount of which you cannot state?
A. I don't remember.
Q. Carried 6 months or a year at your bank?
A. Well, I should say 6 months. Those are matters which can be proven exactly by the books.
Q. Your books at the bank will show just what bills receivable you carried against Rappal, Sons & Company under discount, will they?
A. Yes, sir.
Q. Will your books or any memoranda in your books show any collateral you held?
A. They will not.
Q. No memorandum concerning it?
A. None that I am aware of.
Q. That bills-receivable account you will either testify to yourself or allow Mr. Conrad to when he appears?
95 A. Yes, sir. Either one of us can testify to it. If you will allow me I can say something in relation to this collateral business. Our collateral loans are not large, and they are so small that it is not worth while to keep a record of them. Whenever we take collaterals as we do it on collateral blank notes, and of course the collaterals are recited in the body of the note, so it makes a complete record of the collateral until the note is paid, and when it is

paid of course it is the business of the maker of the note to get his collateral back. When the note is paid the collaterals go back. Then there is no record left in the bank.

Q. Do you know, personally, anything about the three drafts dated, respectively, September 30th, October 1st, and October 3rd, drawn by A. J. Gillespie & Company on Rappal, Sons & Company, which were inquired about — Mr. Conrad?

A. I do not know about them.

Q. Have you any recollection or knowledge as to when they were received at your bank?

By Mr. BROWN: The same stipulation concerning the reservation of a general objection by the attorney for defendant applies to each witness examined.

A. I cannot testify as to that without refreshing my recollection.

Q. Do you know of any means of refreshing your recollection?

A. Well, I think I could talk with Mr. Conrad and Mr. Jameson and be able then to say something about it. The most I can say now is that I knew one of these drafts was held over night at the request of Rappal, Sons & Company, who said they would pay next morning; which draft that was I can't say.

Q. Was not that the first draft?

96 A. Probably it was, but I wouldn't so testify.

Q. When, in the natural course of business, would a draft dated October 1st, 1885, reach your bank?

A. If they mailed it properly it would reach there the second day.

Q. And the same is true of a draft dated October 3rd, is it?

A. Yes, sir; ought to be—October 3rd was Saturday—come to the bank Monday morning.

Q. It is true, isn't it, Mr. Washburn, that the deposits of October 3rd, about which you have testified, made by the Rappals in your bank, of 23 thousand odd dollars, was made in that bank before the draft dated October 1st was protested?

A. Well, I don't know; can't say what time of the day the deposit was made.

Q. That draft was not protested till the 5th, was it?

A. Oh, it must have been.

Cross-examination by Mr. BROWN:

Q. You said that your collateral account was small, or your collateral loans were not large. I will ask you about overdrafts. Does the Union Stock-Yards National Bank charge interest on overdrafts?

A. It does.

Q. What is the general course of your business as to overdrafts in comparison with other banks; do you know?

A. Our overdrafts are very large.

Q. What is the cause of that?

A. We are very free in overdrafts.

Q. Why is that?

A. It is a custom that has obtained from the origin of the bank, almost.

Q. What class of people do they do business with?

97 A. Commission men, largely.

Q. Such persons are concerned in the usual business at the Union Stock-Yards. Does that furnish any reason for overdrafts naturally being large?

A. It does.

Q. Mr. Washburn, the overdrafts which you have mentioned here as the overdrafts of Rappal, Sons & Company at various dates and the overdrafts which Mr. Conrad has mentioned as such overdrafts are all at the close of business, are they not?

A. Yes, sir.

Q. Does it necessarily follow because the account of Rappal Sons & Company was overdrawn at the close of business that it was overdrawn all through business hours of that day?

A. No; not necessarily.

Q. At what time of the day is there most likely to be an overdraft in the business which you conduct with commission men?

A. Don't know how the account stands in the middle of the day, very much. Some accounts are watched very closely. With commission men of small means or with customers of rather limited means they are more likely to be overdrawn in the middle of the day, because they often send off their express before they make their deposits. As a rule, they send their cash remittances to the country—which go by express—in the middle of the day, between 12 and 1 o'clock, put in their checks. Those checks often overdraw their accounts, and at night they may have a credit balance.

Q. Were the accounts between you and Rappal, Sons & Company accounts in which there were many transactions or few?

A. In which there were many.

Q. Did you have frequent transactions with them?

A. Yes; quite a good many checks each day, and quite a good many deposits.

98 Q. Can you give any reason why Mr. Rappal's account was allowed to be overdrawn to such an extent as has been stated?

A. Well, I extended to Mr. Rappal—his firm—pretty good credit because I was satisfied of his personal integrity; had known him a good many years and trusted him largely on his personal credit, personal reputation for integrity, honesty, and fair dealing. Perhaps I better explain more fully about our overdraft system. As I stated, our overdrafts were pretty free; it is a custom that obtained there long ago, and now we require firms who want overdrafts, and have for a long time, to come in and state about what they want to overdraw and what their reason is for overdrawing, and if a firm states that they have got stock in transit for which they have paid a draft and want to be overdrawn a certain amount we rarely, if ever, refuse. We have never lost, since I have been connected with the bank, a dollar by an overdraft of a commission man. The officers of the bank inform me that a commission man has never been known to come in and make a misstatement in respect to what he has in the yards or what he has in transit nor what he has paid on it—what he has advanced on it—and when they state that they have made ad-

vances, paid drafts, against stock which is in transit or what they have on hand in the yard paid for, or paid a portion of it, I don't remember of any instance where we have refused overdraft.

Q. Are overdrafts a source of profit to the bank?

A. Of course, that is the object—to make money out of it.

99 JULY 16TH, 1886.

FREDERICK J. RAPPAL, Jr., being first duly sworn, testified as follows on behalf of complainants, *as follows:*

Q. State your full name.

A. Frederick J. Rappal, Jr.

Q. In what business are you engaged?

A. Live stock commission, Union Stock-Yards, Illinois.

Q. How long have you been thus engaged?

A. About four years.

Q. With what firm?

A. Rappal, Sons & Company. At the present time or——

Q. No, I mean——

A. Rappal, Sons & Company.

Q. State when the firm was organized, or about when.

A. It was about 1883.

Q. And you were one of the sons, one of the partners?

A. I was.

Q. Your father was in the firm, and another brother, was he?

A. Yes, sir.

Q. How long did the firm continue in that form?

A. It continued until June 11th, 1886.

Q. What were your particular duties in connection with that firm?

A. I was general salesman.

Q. Who had charge of the office?

A. I had little to do with the office.

Q. Did you have as much to do as any member of the firm?

A. I guess I did.

Q. Examine the account of sales which I now show you, marked Complainants' Exhibit A, and state if said account of sales was made by your firm to A. J. Gillespie & Company.

A. No, sir.

Q. Who was it made by?

A. That is account of Bowen & Company.

100 Q. Was the paper made—the paper I show you?

A. How?

Q. By your firm?

A. It was made by our firm.

By Mr. BISBEE: Said paper is offered in evidence as Complainants' Exhibit A.

Q. And that account is correct, is it?

A. It is correct.

Q. The account, Exhibit A, is dated October 2nd, 1885, is it?

A. It is.

Q. And calls for 133 head of cattle?
A. Yes, sir.
Q. When did your firm receive those cattle?
A. October 2nd.
Q. Were they received by you on that date?
A. They were.
Q. What time in the day?
A. I do not know.
Q. What is your best impression or recollection about it?
A. In the afternoon, some time.
Q. Of the 2nd of October?
A. Yes, sir; that is the best of my recollection.
Q. How did they come in your possession; how did you get them in your possession? State how they came in your possession as commission merchants.
A. The same as any other cattle.
Q. That isn't what I asked you. Who delivered them to you?
A. We have a general open order from Mr. Williams.
Q. These particular cattle—did the Union Stock-Yard and Transit Company deliver them to you?
A. Yes, sir.
Q. The Stock-Yards Company, then, delivered those cattle to you?
A. Yes, sir.
Q. And they were delivered to you pursuant to an open order, you say, that you had from Mr. Williams, the Secretary of the Stock-Yards Company?
A. Now, look here, these particular cattle, I don't know just how we got them.
Q. You don't know how you got them. You do know they came into your possession?
A. Yes, sir.
Q. That is all you remember, is it?
101 A. All I know is those cattle were shipped by Bowen & Company; that is all I know.
Q. By Bowen & Company?
A. Yes, sir.
Q. How do you know that?
A. I have a little proof.
Q. Did you see them shipped?
A. No.
Q. Did Bowen & Company give any order to the Stock-Yards Company to turn those cattle over to you?
A. That I don't know.
Q. Don't know anything about that? Don't you know that A. J. Gillespie & Company did give an order to turn them over to you?
A. I do not; I wouldn't swear to it; I couldn't tell.
Q. Those cattle came to you, did they, on a way bill or shipping bill for A. J. Gillespie & Company, account Bowen, Kansas City, just as it appears in that account of sales? Do you know anything about that?
A. I do not.

Q. You do not?
A. No.
Q. That you do not know how the word, account Bowen, came on that account of sales, do you?
A. I do.
Q. You do know? Know how A. J. Gillespie came on there?
A. I do.
Q. A. J. Gillespie & Company gave an order, didn't they, to the Union Stock-Yards Company to turn those cattle over to you?
A. Not to my knowledge.
Q. Do you know they didn't?
A. I didn't say I did.
Q. Well, do you now?
A. I say, not to my knowledge.
Q. Now, when did you sell those 133 head of cattle?
A. October 2nd.
Q. Who did you sell them to?
A. I don't remember.
Q. You have no recollection. Who made the sale?
A. My brother.
Q. What is his name?
A. His name is Lawrence L. Rappal.
Q. Where is Lawrence L. Rappal?
102 A. I do not know.
Q. Where was he the last time you heard from him?
A. Either at Fort Collins or Cheyenne, Wyoming Territory.
Q. How long ago was that?
A. In the last ten days.
Q. What is he doing?
A. He is looking up our general interests.
Q. He is still engaged in doing business for your firm, is he?
A. He is—well, no; not for Rappal, Sons & Company.
Q. What firm?
A. For Rappal, Lamb & Company.
Q. When do you expect him home?
A. I do not know.
Q. No knowledge about it?
A. No knowledge about it.
Q. Those cattle realized, did they, net $5,880.25?
A. They did.
Q. That is correct, is it?
A. That is correct.
Q. Who paid this freight of $654.50?
A. Rappal, Sons & Company.
Q. Paid it by check on the bank?
A. In our usual course of business.
Q. Did you pay it by check drawn on the Union Stock-Yards National Bank?
A. Not that individual one, we didn't. We pay every Monday and every Thursday.
Q. All the freight?

A. All the freight.
Q. By a check?
A. By a check.
Q. Drawn on that bank at that time?
A. Yes, sir; well, I don't say that time; not that date.
Q. I mean during that period of time.
A. Yes, sir.
Q. Now, who paid you this $6,649.50, the gross amount received for those 133 head of cattle?
A. The buyer that bought them of us.
Q. Who was it?
A. Well, I don't recollect.
Q. Who did he pay that to—your firm?
A. I do not know whether it was paid in check or in duplicate-sale ticket.
Q. What is a duplicate-sale ticket? Describe it.
A. It is a duplicate of the sale made to a buyer. By the
103 commission firm it is taken and deposited in the bank, and all the buyer buys that day is figured up, and he gives the bank a check for it, and they keep the duplicate—the buyers.
Q. And you are furnished a duplicate of that sale ticket, are you?
A. Yes, sir.
Q. And you deposit that duplicate-sale ticket in the bank to go to your credit?
A. We did, usually; yes, sir; not all of them?
Q. But usually?
A. Yes, sir.
Q. Not universally, but generally; is that true?
A. Generally; yes, sir.
Q. And the bank collects that ticket of the man who buys the cattle, does it?
A. I don't know whether they collect it or whether they come in and pay it. I don't know.
Q. It is one or the other?
A. One or the other.
Q. Now, then, you deposited either a check for $6,649.50 on that day, the 2nd of October, or deposited a duplicate-sale ticket on that day in the Union Stock-Yards Bank, didn't you?
A. About that time I did.

By Mr. BROWN: Counsel for defendants objects to the questions as leading and tending to cross-examine their own witness.

Q. Have you got your bank book, kept with the bank at that time, here?
A. I have.
Q. Will you produce it?

(Bank book produced.)

Q. Please show your bank book of that date—October 2nd, 1885?

(Book shown to counsel.)

Q. What deposit, if any, did you make on October 2nd in the Union Stock-Yards National Bank?

A. $6,708.84.

Q. Did your firm have any other bank account at that time?

A. No; not to my knowledge.

Q. Would you have known it if they had?

A. I think I would.

104 Q. Did that deposit include the $6,649.50, the gross amount received for those 133 head of cattle on that day?

A. I think it must; yes, sir.

Q. Don't you know it did?

A. I wouldn't swear to it.

By Mr. BROWN: Question objected to as improper.

Q. Now, then, did you deposit any other amount of money on that day than the $6,649.50?

A. I suppose I must have or I wouldn't have that much difference.

Q. Do you know where that money came from that you deposited in addition to this amount?

A. I think I could find it.

Q. Do you know?

A. Do I know what?

Q. Where it came from.

A. I say I think I could find out where it came from.

Q. Do you know now?

A. No; I do not know.

Q. You think you could find out?

A. Yes, sir.

Q. What other books have you got with you excepting the bank pass book?

A. The cash book.

Q. Will you produce your cash book?

(Book produced.)

Q. Now, on page 11 of your cash book, under date of October 2nd, 1885, read the two entries appearing upon the debit side of the cash book.

A. W. H. Monroe, $59.34; Swift & Company, $6,649.50.

Q. Who is Swift & Company?

A. A dressed beef concern at the stock-yard.

Q. Are they buyers of cattle?

A. They are.

Q. After having looked at your cash book under date of October 2nd, which shows that you received $6,649.50 from Swift & Company, and looking at your account of sales, marked Exhibit A, can you now state to whom you sold that 133 head of cattle?

A. To Swift & Company.

Q. And can you also state the items that made up your deposit to the Union Stock-Yards National Bank of that date, October 2nd?

A. W. H. Monroe, $59.34; Swift & Company, $6,649.50.

Q. Now, then, by reference to your cash book you know,
105 do you, that the amount of money that Swift & Company paid you for that 133 head of cattle was deposited in the Union Stock-Yards National Bank on the 2d of October?

A. I do.

Q. I now show you Exhibit B and ask you if that is an account of sale made by your firm on the day it bears date, October 3rd, 1885?

A. That is correct.

Q. In whose handwriting is the written portion of it?

A. The book-keeper's.

Q. Your book-keeper?

A. Yes, sir.

By Mr. BISBEE: Said account of sale is offered in evidence as Exhibit B.

By Mr. BROWN: Counsel for the Union Stock-Yards National Bank objects to the introduction of the two papers, Exhibits A and B, on the ground that they are incompetent, irrelevant, and, so far as banking is concerned, would be matters which the bank has never had notice or knowledge of.

Q. Your book-keeper, you say, made the written portion of Exhibit B?

A. Yes, sir.

Q. When did you receive the 810 head of cattle mentioned in that exhibit?

A. It must have been October 3rd.

Q. 1885?

A. Yes, sir.

Q. When did you sell that 810 head of cattle?

A. October 3rd.

Q. State who you sold them to.

A. Nels Morris, 353; Armour, 436; J. O'Brien, 13; Union Rendering Company, 2; Quincy Stock-Yards got 6; that is all.

Q. How did Nels Morris pay for the 353 head of cattle that he bought?

A. By duplicate.

Q. By giving you a duplicate-sale ticket, did he?

A. Yes, sir.

Q. How did Armour pay for the 436 that he bought?

A. By duplicate.

Q. You mean they paid you by duplicate-sale ticket?

A. Yes, sir.

106 Q. Did you deposit those duplicate-sale tickets in the Union Stock-Yards National Bank?

A. The duplicates, by reference to that book, were deposited in the Union Stock-Yards National Bank.

Q. The gross amount of the sale of that 810 head was $20,547.33, wasn't it?

A. It was.

Q. Did you deposit that amount of money in the Union Stock-Yards National Bank?

A. No; the book there shows it; that is all I know.

Q. Please examine your own bank pass book with the Union Stock-Yards National Bank and state what deposits you made on the 3rd day of October, 1885.

A. One was $2,660.40; $7,574.43; $13,056.00.

Q. And what is the aggregate of those deposits?

A. $23,290.83.

Q. How much money did Nels Morris pay for the 353 head of cattle that he bought out of that lot that day?

A. $7,574.43.

Q. What did you do with that money; when did you deposit it?

A. I think it was deposited here in the Union Stock-Yards National Bank?

Q. On that day?

A. On the 3rd day of October.

Q. Did you deposit a duplicate-sale ticket which he gave you and did the bank collect the money of Nels Morris?

A. I suppose they did.

Q. How much money did Armour & Company pay you for the 436 head they bought of you out of that lot?

A. I think it was $12,901.

Q. What did you do with that money?

A. I suppose it was deposited with the Union Stock-Yards National Bank.

Q. Don't you know it was?

A. Well, I don't remember of my taking it over there.

Q. What does your cash book show?

A. My cash book shows one for $10,227.10, the other for $2,673.90.

Q. And the first one is for 345 head of cattle, isn't it, sold to Armour?

A. Last $10,262.10 and first $10,227.10.

Q. And the next one is for 91 cattle, is it?

A. Yes, sir.

107 Q. Then, those two items that you received from Armour that day for those cattle, making 436 head of cattle, went into the Union Stock-Yards National Bank that afternoon, did it?

A. To the best of my knowledge.

Q. It did?

A. I think it did.

Q. And it was sale tickets deposited by your firm, was it not—Armour's sale tickets or duplicate tickets?

A. Yes; I think it was.

Q. And the bank collected the money of Armour?

A. I do not know.

Q. What is your understanding of it?

A. That is my impression.

Q. I will ask you if on the 3rd of October you deposited the entire $20,547.33 with the Union Stock-Yards National Bank, the gross proceeds of the sale of that 810 head of cattle?

A. I think we did. To the best of my knowledge, we did.

Q. I now show you Exhibit C, which purports to be an account of sale rendered by your firm on the 6th of October, 1885, for 122 head of cattle; is that correct?

A. It is correct.

By Mr. BISBEE: I offer the same in evidence as Exhibit C.

The same objection as to the two preceding exhibits by counsel for the Union Stock-Yards National Bank.

Q. Did your firm receive that 122 head of cattle mentioned in that account of sales, Exhibit C?

A. Yes, sir.

Q. What day did you receive them?

A. I think it was the 6th of October.

Q. This account was made out by the clerk in your office and in his handwriting?

A. Yes, sir.

Q. Who did you sell those cattle to?

A. Sold them to L. B. Dowd & Company.

Q. For how much money?

108 A. $2,583.52, less $15 for three bruised.

Q. You really sold them for $2,568.52?

A. Yes, sir.

Q. To L. B. Dowd & Company?

A. L. B. Dowd & Company.

Q. How did he pay for those?

A. I think he gave us a check; he usually gives checks.

Q. What did you do with that check?

A. It was deposited.

Q. Read the entry in your pass book under date of that day.

A. $2,583.52.

Q. Deposited where?

A. In the Union Stock-Yards National Bank.

Q. That money was deposited in that bank on that day, wasn't it?

A. It says so here.

Q. In your pass book kept by the bank?

A. Yes, sir.

Q. The entries made in the handwriting of the receiving teller of the bank.

A. Well, I don't know that.

Q. You don't know that?

A. No.

Q. It is on your pass book kept by the bank?

A. It is on the pass book kept by the bank.

Q. Which you now have in your hands?

A. Yes, sir.

Q. Have you ever paid any of the said amounts mentioned in Exhibits A, B, and C to A. J. Gillespie & Company—your firm, I mean—being $1,857.27 in Exhibit C, $16,510.69 in Exhibit B, and $5,880.25 in Exhibit A?

A. No.

Q. Has he made a demand on you for that money or your firm?
A. Yes, sir.
Q. Have you paid it to him or to the firm of A. J. Gillespie & Company?
A. No.
Q. Or any portion of it?
A. No.
Q. How much money was your firm, Rappal, Sons & Company, overdrawn at the Union Stock-Yards National Bank on the 1st day of October, 1885?
A. I can't tell that.
109 Q. Can you give any approximate estimate of how much you were overdrawn; was it, on October 1st, $18,922.21?
A. I suppose it was.
Q. On the 2nd day of October were you overdrawn $18,454.89?
A. I think it must have been.
Q. On those two dates—October 1st and 2nd—what other indebtedness did your firm owe to that bank; what else did you owe that bank?
A. Well, now, I don't know.
Q. Give us your best recollection.
A. In the neighborhood of, may be, $6,000; something like that.
Q. In that neighborhood?
A. Yes, sir; I wouldn't swear to it.
Q. That is your best recollection, isn't it?
A. Yes, sir.
Q. How was that $6,000 or thereabouts represented; was it by a note given by you to the bank?
A. Well, I think it was.
Q. More than one note?
A. Not to my knowledge.
Q. When was that indebtedness contracted—that $6,000 or thereabouts; how long before October 1st, 1885?
A. Oh, may be 4 or 6 months, perhaps; around there.
Q. Don't you think it was longer than 6 months?
A. I couldn't tell.
Q. Was it for borrowed money of the bank?
A. I think part of it was.
Q. What was the balance of it for?
A. Did you ask me if it was for borrowed money?
Q. Yes.
A. Yes; that is what it was for.
Q. All for borrowed money?
A. Yes, sir.
Q. What collateral security, if any, did the Union Stock-Yards National Bank have for that money borrowed represented by note?
A. Real estate.
Q. What was it?
A. Real estate is all I know.
Q. What real estate?
A. I don't know that, really.

110 Q. How much collateral did they have?
A. I couldn't tell you the amount.
Q. Any idea of what the amount was?
A. It must have been right around what the note was for—may be a little more.
Q. Was it a mortgage made on a farm in Will county?
A. No, sir.
Q. What was the security, where was the real estate?
A. I think it was on some real estate in Will county.
Q. What was the amount of the collateral, or about what amount?
A. I told you about the amount of the note, I think; I don't know.
Q. What became of that collateral; was it given back to you about the 9th of October, 1885?
A. Not to my knowledge.
Q. Do you know anything about what has become of it?
A. No.
Q. Know where it is?
A. No.
Q. Or what has become of it?
A. No.
Q. Does your father know? He does, don't he?
A. I will have to ask him. I tell you I won't answer anything without I can swear to it. I want to be correct.
Q. How did you pay that $6,000 note to the bank and this 18 thousand odd dollars overdraft on October 2nd?

(Objected to as misleading.)

A. With our money.
Q. What money?
A. Money that W. P. Bowen & Company owed us.
Q. Did you pay it with the money which you received from the sale of these cattle mentioned in these three accounts of sale?
A. I couldn't swear to that.
Q. Could you swear you didn't pay it with that money?
A. I know now.
Q. Isn't it true that the $5,880.25 net, appearing on Exhibit A, and the $16,519.69 net, appearing on Exhibit B, and the $1,857.27, appearing on Exhibit C, went to pay that overdraft and a
111 portion of that note to that bank?
A. We paid it with a check.
Q. I want to know if that money went to that bank?
A. That money went into the bank.
Q. Was it kept by that bank in payment of that overdraft?
A. It was not kept, only in *oir*——
Q. As you directed it, you mean?
A. Not that money particularly.
Q. Was it kept by that bank in payment of that overdraft of eighteen thousand odd dollars?
A. Well, I tell you, we deposited a lot of other money with it.
Q. Have you ever drawn that money, that identical money men-

tioned in those three exhibits, out of the bank and paid it to anybody else?

A. No; not all of it.

Q. Have you any of it?

A. The deposit of the 6th of $2,583.52; we also deposited $7,596.37.

Q. Of other money?

A. Yes, sir.

Q. Had nothing to do with this transaction?

A. No; but it went in the same way.

Q. On the 6th of October you not only deposited this $1,857.27 in Exhibit C, but you deposited other money?

A. Yes, sir.

Q. What I ask you is, have you ever drawn out of that bank — Rappal, Sons & Company the three items of money named in those three exhibits?

(Objected to.)

A. I don't know. If you put a lot of five-dollar bills down there I can't tell which one you take out.

Q. Did you, out of the money deposited between October 2nd and October 6th, 1885, pay the bank the eighteen thousand odd dollars overdraft; did you do that?

A. Yes, sir.

Q. Did you, out of the money deposited between October
112 2nd and October 6th, pay anything on that $6,000 note or thereabouts.

A. I don't know whether we did or not.

Q. What settlement did you have with the bank on the 7th, 8th, or 9th of October, 1885?

A. I can't tell you.

Q. On your pass book there does not appear any entry after October 6th, excepting this on October 9th, note $4,006.73. What is that note?

A. I do not know.

Q. Don't you know that your firm gave that bank a note for that amount of money on the 9th of October?

A. My brother generally transacted that business.

Q. Don't you know it was done by your firm?

A. I don't know; I have a slight recollection.

Q. That it was done?

A. But I couldn't get up and say it was.

Q. What is your best recollection?

A. Well, it is doubtful. I think it was given, and I wouldn't swear to it.

Q. You think the amount of that note was given that day?

A. Yes, sir.

Q. To the bank?

A. I think it was.

Q. And that on that day that was all you owed the bank?

A. I guess that must have been all.

Q. Now, then, how was that note secured?

A. By real estate.
Q. Where?
A. Will county.
Q. Who owned that real estate?
A. Father.
Q. Did he have any other real estate excepting what was given to secure that note?
A. No.
Q. None whatever?
A. No.
Q. Did he have any other property?
A. No.
Q. Not a cent? Did the firm of Rappal, Sons & Company have any property excepting the real estate that was given to secure that note?
A. They had a horse.
Q. Did they have a cow?
A. I wouldn't swear to that.
113 Q. Did they have any other property excepting that real estate?
A. They had the fixtures in the office; that is all.
Q. That is all they had?
A. That is all.
Q. On the 8th of October did they deposit 26 cents with the bank to just balance the account after the giving of that note?
A. I do not know.
Q. That is all the entries that are in your pass book?
A. Yes, sir; that is all.
Q. Were there ever any check or checks drawn by your firm or any one else on the Union Stock-Yards National Bank to pay any of the three items of said money, $1,857.27 in Exhibit C, the $16,519.69 in Exhibit B, and the $5,880.25 in Exhibit A?
A. I think we did.
Q. You think you did?
A. I think so.
Q. Have you got the checks?
A. I think they are at the office; I don't know.
Q. Will you produce them?
A. I will.
Q. Who were they payable to?
A. Stock-Yards Company—Union Stock-Yard & Transit Company.
Q. Drew the checks for those respective amounts, did you—the net amount realized for those cattle?
A. No.
Q. My question is this: Exhibit A shows the net amount realized out of the 123 head of cattle was $5,880.25, don't it?
A. Yes, sir.
Q. Exhibit B shows the net amount realized out of the 810 head of cattle was $16,519.69, don't it?
A. It does.

Q. Exhibit C shows the net amount realized out of the 122 head of cattle was $1,857.27, don't it?

A. Yes, sir.

Q. Has your firm ever drawn any checks payable to any one for those three amounts or any portion of them?

A. Yes; I think they have.

Q. Who to?

A. The Union Stock-Yards National Bank.

114 Q. Will you produce those checks—all the checks drawn by your firm between October first and October 10th, 1885?

A. Yes, sir.

Adjourned to 2 o'clock p. m.

F. J. RAPPAL continued:

By Mr. BISBEE: Make any explanation you want to, Mr. Rappal.

A. You asked me if I drew the checks against any of those specified amounts for anybody——

By Mr. MILLER: As I understand, Mr. Bisbee meant to ask you whether you drew any checks for the net proceeds of the sale of 122 head, 133 head, and 810 head in favor of anybody; and, if so, in favor of whom?

A. Well, I didn't draw any in favor of anybody.

Q. That is what you mean to say now?

A. Yes, sir.

By Mr. BROWN: Did you draw any checks, Mr. Rappal, between the 2nd of October and the 7th of October upon your bank account with the Union Stock-Yards National Bank in favor of anybody?

A. Of course, we had other deposits and had to make remittances on other stock, but on any of those specified amounts particularly we didn't.

Q. You mean that you deposited the money which is included in here and deposited other money?

A. Yes, sir.

Q. And drew checks during that time?

A. During that time; yes, sir; the same as the every-day course of business?

Q. You transacted business in the regular course of business?

A. Yes, sir.

By Mr BISBEE: Examine the paper, Exhibit D, now shown you, which purports to be a draft dated September 30th, 1885, drawn by A. J. Gillespie & Company for $6,231.10, and state when you first saw that draft, if you ever saw it.

A. I think I must have seen that draft on the 2nd day of October.

Q. Where did you see it?

A. In my office.

115 Q. Under what circumstances did you see it?

A. It was sent in there as others are.

Q. Presented to you for payment, was it?

A. Yes, sir.

Q. Did you ever see it after that?

A. No; not until just now.
Q. You didn't pay it, did you?
A. No.
Q. You got notice of its protest on that day, didn't you—the 2nd of October?
A. The 2nd or 3rd.

By Mr. BISBEE: The draft and protest is offered in evidence as Complainants' Exhibit D.

Q. Examine the draft which I now show you, marked Exhibit E, purporting to be drawn by A. J. Gillespie & Company, at Kansas City, October 1st, 1885, for $19,505.62, and state whether or not you ever saw it before; and, if so, where.
A. I don't know what day I saw that draft.
Q. It was presented to you for payment, wasn't it?
A. Yes, sir.
Q. By the Union Stock-Yards National Bank?
A. Yes, sir.
Q. And payment was refused?
A. It was.
Q. Have you any recollection about its being presented?
A. I have.
Q. What day was it; can you fix it?
A. I think it was on a Monday, but the day of the month I couldn't tell.
Q. You couldn't tell?
A. No.
Q. Wasn't it presented to you on Saturday?

(Objected to by Mr. Brown as an attempt to lead the witness and cross-examine his own witness.)

A. No; I don't think it was.
Q. Do you know that it was not presented on Saturday?

(Question objected to. Witness has stated; witness is complainant's own witness.)

A. If I was to swear I would say it was not.
116 Q. Are you prepared to say that draft was not presented to you on Saturday?

(Objected to.)

A. It has been too many months since.
Q. You are not willing to state, then, positively, are you?

(Objected to.)

A. I do not know.

By Mr. BISBEE: The paper marked Exhibit E is offered in evidence as Complainants' Exhibit E.

Q. Examine Exhibit F, which purports to be a draft drawn by A. J. Gillespie & Company, Kansas City, October 3rd, 1885, on your firm for $691.70, and state if you ever saw that before.

A. I have.
Q. When did you see it and under what circumstances?
A. I saw this the 5th of October.
Q. 1885; at your office?
A. At our office.
Q. At the stock-yards?
A. Yes, sir.
Q. Presented at the Union Stock-Yards National Bank for payment, was it, on the 5th of October?
A. Yes, sir.
Q. Did you pay it?
A. No, sir.
Q. You didn't pay all three drafts?
A. No, sir.

By Mr. BISBEE: Paper marked Exhibit F is offered in evidence as Complainants' Exhibit F.

Q. Have those three drafts drawn by A. J. Gillespie & Company on your firm against the cattle mentioned in the three accounts of sale marked, respectively, Exhibits A, B, and C —?
A. They were.
Q. Do you recollect of your firm's giving a check to the Union Stock-Yards & Transit Company for freight, yardage, &c., that you owed that company during the first days of October that was not paid?
A. I do.
Q. About what was the size of that check?
117 A. Around $5,800; don't know the amount.
Q. That $5,800 was the amount you owed the Stock-Yards Company, was it, for freight, yardage, feed, &c., at that time?
A. It was.
Q. You usually settled once a week with the company?
A. Twice a week.
Q. That check was never paid by the bank was it?
A. Not to my knowledge.
Q. Was that check given on the 7th day of October, 1885?
A. I don't know.
Q. Wasn't it given that day or very near that time?
A. I don't know how near, but given somewhere about that time.
Q. Did you afterwards give a note to the Stock-Yards Company for that check?
A. We did.
Q. And was that note secured by mortgage on land owned by your father in Will county?
A. It was.
Q. Did the same mortgage secure also the note of $4,006.73 to the Union Stock-Yards National Bank?
A. I think it did; I don't know anything about that part of the dealings; know little about that.
Q. Didn't you likewise give a check to some one on the 3rd of October in the neighborhood of $200, after you had deposited the

money from this 810 head of cattle, which was not paid by the bank?

A. No.

Q. Did you have any other check excepting that one to the Stock-Yards Company thrown out of the bank?

A. I don't really recollect the time.

Q. There was one thrown out, wasn't there?

A. I think there was a little one.

Q. You showed that check to Mr. Gillespie, didn't you?

118 A. I think I showed it to his son.

Q. Did any one connected with the Union Stock-Yards National Bank send for you or any member of your house during the first days of October with relation to your overdraft there?

A. No.

Q. Did you have any conversation with any officer of the bank?

A. I didn't.

Q. Did any one of your firm?

A. I did, but not—no; I don't know as I did.

Q. Who did in your firm?

A. My brother.

Q. Lawrence L. Rappal?

A. Yes, sir.

Q. The one that is out West now?

A. Yes, sir.

Q. Were you present?

A. No; I was not.

Q. Who sent for your brother to come to the bank?

A. He went there of his own will.

Q. On account of this overdraft? On that subject, was it?

A. I don't know what he went—he went in there on some business. He goes in every day.

Q. About when was that?

A. Don't know.

Q. Was it about the 1st or 2nd of October?

(Objected to as leading.)

A. I don't know; couldn't say.

Q. Where was your father the last of September and first of October, 1885.

A. Kansas City, I suppose.

Q. Did you write him any letters during the time he was there?

A. I have written him letters, of course, as I always do when he is away from home?

Q. Did you keep letter-press copies?

A. No, sir.

Q. Did you write him a letter and state in substance that the bank wanted their overdraft made up, and asking him to get the money, if he could, in Kansas City to pay the bank?

(Objected to.)

119 A. I never did.

Q. Did your brother, to your knowledge, write such a letter?
A. Don't know.
Q. Have you any knowledge about it one way or the other?
A. Don't know.
Q. You don't know whether he wrote him or not?
A. No.
Q. You say there were no letter-press copies kept of those letters?
A. No, sir.
Q. You have got a letter-press copy book, haven't you?
A. Well, yes, sir.
Q. That you kept at that time?
A. No; we haven't.
Q. What has become of it?
A. We have not used any for 2 years or three.
Q. Have not copied your letters at all?
A. No, sir.
Q. Have not kept any letter-press or book in your office?
A. We have a letter-press and book, but haven't used them.
Q. For 3 or 4 years?
A. Yes, sir.
Q. How did it happen that you closed up your account with this bank on the 7th of October?
A. W. P. Bowen & Company owed us money and we, of course, wanted the money; we shipped to them right along; there was a big overdraft, and we saw things going entirely too far on us, and we just stopped right there and then.
Q. That is the way it came about?
A. Yes, sir.
Q. Have you ever done any business with this bank since the 7th of October, 1885?
A. Yes, sir.
Q. What was it? What business has been done with them since?
A. The same as we have always done.
Q. Continued to do business right along with the Union Stock-Yards National Bank?
A. Yes, sir.
Q. Your firm?
A. Yes, sir.
120 Q. Have you got an account there now?
A. Yes, sir.
Q. And have had ever since, have you?
A. The account was not run in Rappal, Sons & Company's name in the Union Stock-Yards National Bank.
Q. After the 7th of October, 1885; is that correct?
A. I don't know whether the 7th or 9th, or just when it was.
Q. Near that date or about that?
A. About.
Q. What name did the account run in after that at the bank?
A. L. L. Rappal, trustee.
Q. That was your brother? And the account has continued there,

then, since about the 9th of October, 1885, in the name of L. L. Rappal, trustee?

A. Yes, sir.

Q. And still continues there in that way?

A. No, sir.

Q. Did it up to the time Lamb went in?

A. Yes, sir.

Q. And since that it has continued in the name of Rappal, Lamb & Company, has it?

A. Yes, sir.

Q. How much have you paid the Union Stock-Yards National Bank upon that $4,006.73 note which you gave on or about the 9th of October, 1885?

A. Don't know.

Q. Have you any idea?

A. Haven't any idea.

Q. No knowledge whatever about it?

A. No knowledge.

Q. How much have you paid the Union Stock-Yards & Transit Company on the $5,800 note which you gave about that time?

A. Don't know that.

Q. Do you know you have made any payments on either of those notes?

A. I think payment has been made, but I don't know how much.

121 JULY 16TH, 1886.

GEORGE T. WILLIAMS, being first duly sworn, testified on behalf of complainants as follows:

By Mr. BISBEE: State your full name.

A. George T. Williams.

Q. What is your occupation, Mr. Williams?

A. Secretary and treasurer of the Union Stock-Yards and Transit Company.

Q. And have been for how long?

A. Nearly 20 years.

Q. State what the Union Stock-Yards & Transit Company is, what the corporation is, what its object is, and what it does.

A. It affords a place for a market and receives and takes care of live stock; receives live stock from railroads sent in.

Q. When it receives live stock sent to be sold what does it, as a rule, do with the stock; to whom is it turned over?

A. Delivered to the owners or consignees.

Q. And does the company itself require an order from the shipper to you to deliver?

A. When it is not consigned—when stock is not consigned to parties at Chicago and it is in the name of the shipper, then it requires an order to deliver the stock to the other parties.

Q. But if it is consigned, then it is delivered directly by you to the consignee?

A. Yes, sir.

Q. Without an order?

A. Yes, sir.

Q. Have you any orders given by the Hanford Cattle Company or the Hanford C. Co. consigned from H. C. Co. to deliver any cattle to A. J. Gillespie & Company, dated October 1st, 1885?

(Question objected to as incompetent and irrelevant by the counsel for the Union Stock-Yards National Bank.)

122 A. I have an order signed by Hanford C. Co. to deliver, which is 15 cars when it leaves Kansas City, but arrived in Chicago it is 16 cars to A. J. Gillespie & Company.

Q. Please produce such order and let the reporter copy the same into the record.

Order produced and is as follows:

"OFFICE OF ANDY J. SNIDER & CO.,
STOCK-YARDS, KANSAS CITY, MO., *Oct.* 1*st*, 1885.

Union Stock Yards & Transit Co., U. S. Yards, Ill.:

Please deliver to A. J. Gillespie & Co. 16 cars cattle shipped via Han. & St. Jo R. R., *countersigned* from H. C. Co. to us.

Yours truly, HANFORD C. CO."

Endorsed on the back is the following: "Deliver to Rappal, Sons & Co. A. J. Gillespie & Co. Rappal, Sons & Co. to C."

Q. Have you another order of the same date for the same subject-matter? If so, please produce it.

A. I have an order dated Kansas City, October 1st, to Union Stock-Yards & Transit Company, signed by Quinlan, M. & Co., to deliver to A. J. Gillespie stock that arrived there in 21 cars.

Q. Please produce the order to the short-hand reporter and permit her to copy the same in the record.

123 Order produced, which is as follows:

"OFFICE OF QUINLAN, MONTGOMERY & CO.,
STOCK-YARDS, KANSAS CITY, MO., *Oct.* 1*st*, 1885.

The Union Stock-Yard & Transit Co., U. S. Yards, Ill.:

Please deliver to A. J. Gillespie & Co. 21 cars cattle shipped via — R. R., *countersigned* — S. M. to us.

Yours truly, QUINLAN, MONTGOMERY & CO."

On the back is endorsed the following: "Deliver to Rappal, Sons & Co. A. J. Gillespie & Co. Rappal, Sons & Co. T. Chittick."

Q. I will ask you to state, in relation to these orders that you have produced, to whom those cattle named in those two orders were delivered.

A. I ordered them to be delivered to Rappal, Sons & Company.

Q. Of course you don't know personally?

A. When we get orders of that kind we notify the yards who to deliver to, according to the order.

Q. Who paid the freight on those cattle to your company?

A. Freight was charged up to Rappal, Sons & Company.

Q. Did Rappal, Sons & Company fail to pay their bills to th Union Stock-Yards Company the first of October, 1885?

A. About that time; I couldn't tell exactly without referring to the books. They failed to honor their account and check for it when called upon.

Q. Can you tell how large the stock-yards' account was against them at that time?

A. I don't know; can't recollect.

124 Q. Your company took a note, didn't they, secured by some real estate, for that balance?

A. There was a settlement made and, I think, a mortgage and notes given.

Q. That is, the same mortgage secured the note to the stock-yards company that it did for $4,000 due the Union Stock-Yards National Bank?

A. Notes given each one.

Q. There was a mortgage for both notes?

A. Yes, sir; mortgage securing both notes.

Q. On land in Will county?

A. I think it was in Will county.

Q. The note, as you recollect it, of about $4,000 was made to the Union Stock-Yards National Bank, and note of the same amount to the stock-yards company?

A. I think our note was greater than the bank's.

Q. About $5,000, you think?

A. $5,000 or $6,000.

Q. And that mortgage was given securing both notes?

A. Yes, sir.

Q. Do you know whether that note has been paid or not to your company?

A. All of the note has not been paid, but a payment has been made.

Q. On account of it—you were a director in the Union Stock-Yards National Bank?

A. I was.

Q. In 1885?

A. Yes, sir.

Q. Did you know of an overdraft by Rappal, Sons & Company in that bank, on October 1st and 2nd, of about $18,000?

A. I did not.

Q. Did you know they owed the bank about $5,000 or $6,000 on a note besides the overdraft?

A. I have no knowledge of the transactions between them and the bank in detail—of any individually.

Q. You don't give that matter your attention?

A. Don't give those matters my attention; the day's doings and overdrafts of shippers don't come before me at all.

125 Q. Do you remember of Rappal, Sons & Company giving

the stock-yards company a check on the Union Stock-Yards National Bank for the amount due you?

A. I think they did.

Q. And the check was not paid, was it?

A. The check was not honored.

Q. After that you took a note secured as you have stated?

A. Check was then returned, I think, to them immediately after being presented to the bank; returned back to Rappal, Sons & Company.

Q. You remember, don't you, that there was a check given for that amount and not paid?

A. I think there was a check given and returned to them; that is my recollection.

Cross-examination by Mr. BROWN:

Q. Mr. Williams, since these are copied into the stenographer's notes, I would like an explanation. You understand that Rappal, Sons & Company endorsed upon each of these orders by a person who wrote "T. C.," and on the other there appears "T. Chittick." Do you know who Chittick is?

A. All I know is there is a man there at work in the yards.

Q. For Rappal, Sons & Company?

A. Yes, sir; am not acquainted with him.

Q. He was at work in the yards, at the place where the representative of Rappal, Sons & Company would naturally be to take charge of this stock?

A. He was either in the office or in the division—I don't know.

Q. These orders are always endorsed before the cattle are delivered?

A. Endorsed before. That is simply to give us to understand—that is required in different departments that they may know they come through the regular channel.

Q. After these orders get to the stock-yards nobody neces-
126 sarily sees these orders except the persons in each department and whoever has endorsed on them?

A. They come to my office, and then they are placed on file with the bills, and they don't leave the office at all, unless in such a case as this, unless I know something about it; don't go out without an order from me.

Q. There is no reason to suppose that any person connected with Rappal, Sons & Company or with the bank ever saw these except T. Chittick?

A. Excepting the time they were delivered, don't know who saw the orders. They generally come to the commission house first. Rappal, Sons & Company may have seen these orders. That I don't know. They are either sent through them or direct to the stock-yards company.

Q. I understood you that they were sent to the stock-yards company.

A. They come to the company, but they may come through the house or may come by mail—either.

Q. May come through the house or direct to you, and you don't know——

A. I couldn't in this case tell at all, because the first I saw of it was in the office, presented to me. They come both ways, orders do—through the mail and also sent to the house.

Two additional orders, sent in by Mr. Williams, are as follows:

"OFFICE OF ANDY J. SNIDER & Co.,
STOCK-YARDS, KANSAS CITY, MO., *Oct.* 3*d*, 1885.

The Union Stock-Yard & Transit Co., U. S. Yards, Ill.:

Please deliver to A. J. Gillespie & Co. 1 car cattle shipped via Han. & St. Jo R. R., consigned from A. D. to us.

Yours truly, A. J. SNIDER & CO."

127 Endorsed on the back is the following: "Deliver to Rappal, Sons & Co. A. J. Gillespie & Co. Rappal, Sons & Co. Chittick."

"KANSAS CITY, MO., *Oct.* 3, '85.

Union Stock-Yard & Transit Co., Chicago, Ill.:

Please deliver to A. J. Gillespie & Co. four cars cattle, consigned from Shelby & Fulkeeson to us via C., B. & Q. R. R.

MOUNTJOY, WHITE & CO.

Deliver above cattle to Rappal Sons.

A. J. GILLESPIE & CO."

Endorsed on the back — the following: "Rappal, Sons & Co."

"OFFICE OF ANDY J. SNIDER & Co.,
STOCK-YARDS, KANSAS CITY MO., *Sept.* 30, 1885.

The Union Stock-Yard & Transit Co., U. S. Yards, Ill.:

Please deliver to A. J. Gillespie & Co. 7 cars cattle shipped via C. & A. R. R., consigned from Drumm to us.

Yours truly, A. J. SNIDER & CO."

On the back is the following: "Deliver to Rappal, Sons & Co. A. J. Snider & Co." "Rappal, Sons & Co. J. H. Rappal."

"OFFICE OF ANDY J. SNIDER & Co.,
128 STOCK-YARDS, KANSAS CITY, MO., *Sept.* 29*th*, 1885.

The Union Stock-Yard & Transit Co., U. S. Yards, Ill.:

Please deliver to A. J. Gillespie & Co. 1 car cattle shipped via Han. & St. Jo R. R., consigned from Barfoot to us.

Yours truly, A. J. SNIDER & CO."

Endorsed on the back is the following: "Deliver to Rappal, Sons & Co. A. J. Gillespie & Co." "Rappal, Sons & Co. J. C."

The above orders are Exhibits S, T, U, & V.

129 JULY 16TH, 1886.

CHARLES F. CHURCHOUSE, being first duly sworn, testified on behalf of complainants as follows:

By Mr. BISBEE: What is your full name?
A. Charles F. Churchouse.
Q. Where do you reside?
A. At present staying at 471 Winter.
Q. In this county?
A. In the town of Lake.
Q. Where were you employed, if any place, during the year 1885?
A. Part of the time with George Adams and part of the time with Rappal, Sons & Company.
Q. At the stock-yards?
A. Yes, sir.
Q. What part of the time were you employed by Rappal, Sons & Company?
A. From the 13th of July, 1885, to the 13th of February, 1886.
Q. In what capacity were you employed?
A. Book-keeper and clerk.
Q. For Rappal, Sons & Company?
A. Yes, sir.
Q. Did you make these accounts of sales marked, respectively, Exhibits A, B, and C in this case, which are now shown you?
A. Yes, sir.
Q. They are in your handwriting, are they?
A. All three of them; yes, sir.
Q. And they are correct, are they?
A. To the best of my knowledge and belief they are correct.

130 Q. And the net amounts realized from the cattle mentioned herein are properly stated at the foot of each one of the exhibits, are they?
A. Yes, sir.
Q. Do you know about the money realized from the sale of these cattle being deposited in the Union Stock-Yards National Bank?
A. I believe it was deposited in the Union Stock-Yards National Bank.
Q. On the days that these bear date respectively—these exhibits?
A. I should say so. It would be in the ordinary course of business. I have no reason to doubt but what it was.
Q. Have you any recollection or knowledge as to how the deposits were made—by checks or sale tickets?
A. That would depend, in a great measure. People around the stock-yards pay by checks and some by sale tickets.
Q. How would it be with Swift & Company?
A. By check.
Q. How did Armour pay?
A. Sale ticket.
Q. How did L. B. Dowd pay?
A. Generally with check, but I have known him to pay with duplicates.

Q. By duplicate you mean duplicate-sale tickets?
A. Yes, sir; we call them duplicate-sale tickets.
Q. Do you know how these were paid, in point of fact?
A. No; I couldn't fix that in my memory, not at this lapse of time.
Q. Did the firm of Rappal, Sons & Company keep a bank account anywhere else than with the Union Stock-Yards National Bank?
A. Certainly not for business purposes.
Q. I show you Exhibit D, being a draft drawn by A. J. Gillespie & Company, drawn on Rappal, Sons & Company September 30th, 1885, for $6,231.10, with the protest attached. State if you ever saw that draft before.
A. Yes, sir; I believe I have seen this draft, but I couldn't swear to the amount.
131 Q. State whether it was presented at the office for payment by the Union Stock-Yards National Bank.
A. Yes, sir.
Q. What day was it presented?
A. Well, I fix it in my mind——

(Objected to.)

A. I will say Saturday, the 3rd of October, with another draft.
Q. Was that other draft, Exhibit E, which I now show you, being for $19,505.62, dated October 1st, 1885, drawn by A. J. Gillespie & Company on Rappal, Sons & Company?
A. You refer to this or the second?
Q. You say you fix it in your mind as those two having been presented there on Saturday, the 3rd of October?
A. Yes, sir.
Q. Do you know how long they remained in your office?
A. No, sir; I can't say; they came in about the usual time; about noon; and I don't know how long it was——
Q. I also show you another draft, dated October 3rd, 1885, protested on the 5th, for $691.70, drawn by A. J. Gillespie & Company on Rappal, Sons & Company; do you remember of that draft being presented there?
A. No, sir.
Q. You have no recollection about that?
A. No, sir; don't think I ever saw that draft at the office.
Q. Do you recollect the fact of a check being drawn by the firm of Rappal, Sons & Company for the Union Stock-Yards Company for freight, &c., being protested, for about $5,800?
A. No, sir; I don't call that fact to mind.

Cross-examination by Mr. BROWN:

Q. I understood you to say that as to this draft that was first shown you, you thought you had seen that draft, but you couldn't tell the amount.
A. No; I can't fix the amount.
132 Q. That is, you remember them; how do you know you saw these drafts—that it was not some other drafts that you saw?

A. I remember the dates of the two drafts.
Q. Of which two drafts?
A. The two first that you have.
Q. What are the dates?
A. One is September 30th, the other October 1st.
Q. How do you remember the dates?
A. Simply because I have a memory, I suppose, sir.
Q. Why don't you remember the amounts?
A. I didn't take much notice of them; besides it is more for a man to carry in his head—dollars and cents.
Q. Why did you take any more notice of the dates than you did of the amounts?
A. Didn't take any particular notice, I presume, than just to remember them.
Q. Do you remember any other drafts that were presented upon a day from the 30th of September to the 10th of October?
A. No; not any specific drafts.
Q. You remember just two, do you?
A. I remember those two drafts.
Q. What do you remember about them—the dates; anything else?
A. I remember their being protested.
Q. You couldn't swear to the amounts, you say?
A. No; I couldn't.
Q. Do you know whether they were sight drafts or to whom they were payable?
A. I know they were always drawn at sight.
Q. Could you have sworn to whom they were payable; do you remember that?
A. No; but I should have said, if I had been asked the question, to Mr. Conrad, because they were invariably drawn that way.
Q. What were?
A. Drafts from the Kansas City Bank.
Q. Were any other drafts ever presented to Rappal, Sons & Company?
A. Yes, sir; certainly.
Q. Could you swear as to any other drafts presented on Saturday that you speak of—the 3rd of October?
133 A. No, sir; I couldn't.
Q. As to any presented on Friday?
A. No, sir.
Q. Or any presented on Monday?
A. Could not as to those if they had not been protested.
Q. As to any presented on Monday?
A. No, sir.
Q. Or Tuesday?
A. No, sir.
Q. Were these drafts protested at the time you saw them?
A. That I can't say.

(Objected to; protest will show.)

Q. Mr. Churchouse, I understood you to say that you should not

have remembered these drafts except that they were protested. Then you knew that?

A. Certainly I did.

Q. You say you connect the protest of them with your remembrance of them?

A. Exactly.

Q. You remember they were protested upon the day they were presented?

A. I didn't say so.

Q. How do you connect them with being protested?

A. I remember the fact of their being protested.

Q. You remember the fact of their being protested?

A. Certainly.

Q. When did you know it?

A. At the time it was done.

Q. How many times did you see this draft?

A. I saw it in the office.

Q. The day it came there?

A. Yes, sir.

Q. And you knew it was protested then—that is what made you remember it?

A. Not on the day it came.

Q. Why do you say, then, that you remember the fact because you remember its being protested?

A. I took particular notice of these drafts when they came in.

Q. Why?

A. I asked Mr. Rappal, Jr., what was going to be done in the matter, and he said they were going to be protested.

Q. He said they were going to be—that is what you mean now?

A. Yes, sir; that is what I mean—when they were presented for payment.

134 Q. Then, by saying you recollect you took particular notice of them because they were protested, you mean because Mr. Rappal said they were going to be protested?

A. Yes, sir.

Q. Did you ever see them again?

A. No, sir; I have no knowledge.

Q. How do you fix the date as Saturday, October 3rd, when you say two came in together?

A. Because that is the day we finally decided not to pay the draft.

Q. How do you fix that date?

A. Because I remember it was Saturday.

Q. You were there the following Monday?

A. Certainly.

Q. Do you remember two drafts coming in upon Monday?

A. No, sir.

Q. Are you sure?

A. Yes, sir; I shouldn't say so if I did.

Q. Are you sure no drafts came in on Monday?

A. Couldn't be certain; might have been.

Q. If there might have been one there might have been more than one?
A. Exactly.
Q. You don't remember whether on Monday any drafts came in or not?
A. No, sir.
Q. Do you know whether there were any on Friday?
A. Couldn't say, because drafts were constantly coming in.
Q. Mr. Churchouse, what is your present business?
A. I am doing nothing.
Q. When did you leave the employ of Rappal, Sons & Company or any of the Rappals?
A. The 13th of February.
Q. Of this year?
A. Yes, sir.
Q. When did you last see these drafts before Mr. Bisbee handed them to you?
A. I saw them at Mr. Bisbee's office, but not to inspect them.
Q. When?
A. I didn't have them out of his hands to me.
Q. When did you see them at Mr. Bisbee's office?
A. One day this week, sir.
Q. How did you come to go to Mr. Bisbee's office?
A. I came there at Mr. Gillespie's invitation.
Q. When was that; more particularly, what day this week?
A. Wednesday.
135 Q. Had you ever been at Mr. Bisbee's office before that?
A. No, sir.
Q. When did you first see Mr. Gillespie?
A. I saw Mr. Gillespie at Rappal, Sons & Company's office.
Q. When?
A. Last fall.
Q. When did you see him again?
A. On Tuesday.
Q. Of this week?
A. Yes, sir.
Q. Where did he see you?
A. Wood Brothers' office.
Q. At the stock-yards?
A. Yes, sir.
Q. Did you come with him immediately to Mr. Bisbee's office?
A. No, sir.
Q. Did you come during that day?
A. No, sir.
Q. I thought you said Tuesday?
A. Wednesday.
Q. You came the next day. Has Mr. Gillespie or any other person been paying you for your time during this week?
A. No, sir.
Q. They haven't paid you anything?
A. No, sir.

Q. Did they promise to pay you?
A. No, sir.
Q. Did they pay you anything for coming up here?
A. Only my car fare?
Q. Did they pay you anything for giving information about the books of——
A. Not the least cent.
Q. Have they promised to pay you anything?
A. No, sir.
Q. Have they said anything about it?
A. No, sir.
Q. Have you told them——
A. No; I don't know that I have, any more than that I should expect something for my time.
Q. Did you say you had got something for coming up here, and would get more when this thing was through?
A. No more than car fare.
Q. Did you say you were going to get car fare?
A. As a matter of fact, I have no money, and Mr. Gillespie gave my car fare; that is the amount of it, nothing more or less.
Q. As a matter of fact, then, didn't you say you had got something, and are you not now explaining it to me that you got car fare?
A. That is all right.
Q. Is that what you mean?
136 A. That is what I mean.
Q. Then when you said you had got something already and were going to get more you didn't at the same time explain that what you had got was car fare?
A. I didn't think it was necessary—such an insignificant amount, just to pay my car fare.
Q. Have you been in any employment since the 13th of February?
A. Yes, sir; been working for Swift.
Q. How long did you work for him?
A. About three months, I think, or 3 and a half.
Q. Then you must have left him the first of June some time?
A. Somewhere about there, I guess. I was out 4 weeks after I left Rappal.
Q. Have you been out of employment since that time?
A. I have.
Q. Who brought those drafts to the office?
A. The clerk from the bank.
Q. Who?
A. I couldn't remember his name; don't know his name, although I am——
Q. Would know him if you saw him?
A. Certainly.
Q. Mr. Jameson.
A. No, sir; he is the assistant cashier.
Q. But it was not he who brought these drafts in?
A. No, sir.

Redirect examination:

Q. When you had an interview with Mr. Bisbee on Wednesday of this week in relation to coming to testify in this case Mr. Gillespie and Mr. Bisbee requested you to come and testify, didn't they?

A. Yes, sir.

Q. Did you reply that you didn't want to testify in this case until you had told your former employers about it, and wanted everything perfectly fair with them, and tell them so?

A. Yes, sir; and I went back and saw Mr. Rappal.

Q. That was the substance of the conversation?

A. Yes, sir, the substance.

Q. And all the conversation?

A. All the conversation.

Q. Did you say the same thing to Mr. Wright at his office?

A. Told Mr. Wright the same thing and Mr. Gillespie.

137 By agreement of counsel the taking of further testimony in this case is adjourned to Saturday, July 17th, 1886, at 10 o'clock a. m.

JULY 17TH, 1886.

Counsel present as before.

GEORGE E. CONRAD recalled for complainants.

By Mr. BISBEE: Since your examination yesterday, have you referred to the books of the bank of which you are cashier, with reference to the bills-receivable account, so that you can state what bills receivable the bank held against Rappal, Sons & Company as early as the first of July, 1885?

A. Appears to be a note of Rappal, Sons & Company; note $7,000, secured by note; don't say what note.

Q. First give the date of that note.

A. Given June 13th, 1885, signed by Rappal, Sons & Company.

Q. The amount?

A. $7,000.

Q. Payable when?

A. It was payable July 16th.

Q. And that was under discount on July 1st, was it?

A. Under discount July 1st.

Q. And now what do you say about any security connected with that $7,000 note?

A. Note attached to it; don't say where the note was; it was collateral note.

Q. Just state exactly what your books show.

A. That is what it shows. Dated July 13th; signed by Rappal, Sons & Company; said note—that means collateral note—attached to it; some other party's notes, and the amount is $7,000, due July 16th.

Q. Was that the only note under discount on that date, July 1st, made by Rappal, Sons & Company to your bank?

A. Yes, sir.

138 Q. Now, then, that note, you say, matured July 16th?

A. Yes, sir.

Q. Please refer to your bills-receivable account and state what was done with that note on July 16th.

A. It was carried over, for some reason, until July 28th. On the 28th of July it was renewed, dated back on the 17th—the same note with the same collateral—made payable on September 17th.

Q. With the same collateral, was it?

A. Yes, sir; I should judge so.

Q. Now, then, between July 28th and September 17th did you discount any other note or did the bank hold any other note on Rappal, Sons & Company?

A. I don't know what the bank might have held. That is the only discount we had.

Q. Did that constitute all the bills-receivable indebtedness from Rappal, Sons & Company to the bank?

A. Yes, sir; that is all at that time.

Q. Please refer to the date of the maturity of that note. Did you, between July 28th and September 17th, hold any other indebtedness, represented by bills receivable or in any other form, than the overdraft up to September 17th than the $7,000 note you have spoken of?

A. Not that I know of.

Q. Do your books show any?

A. No; the books don't show any. I am giving this by going by the books entirely.

Q. Haven't you any recollection of transactions with Rappal, Sons & Company except what the books show, Mr. Conrad?

A. No, sir.

Q. Turn to September 17th and state what was done with that note on that date—the date of its maturity.

A. That note appears to have been paid in different payments.

Q. State how; give the details of it.

A. On October 5th, payment made on it of $1,060.

Q. October 5th, 1885?

A. October 5th, 1885. On October 6th, payment of $1,933.27; on October 9th there was a payment of $4,006.73.

139 Q. That $4,006.73 was another note, was it not?

A. No, sir; payment on that note—closing that note up.

Q. Wasn't it, in fact, a new note made by Rappal, Sons & Company?

A. I can't tell you about that.

Q. Secured by mortgage?

A. I can't tell about that. The books show a payment—that was paying a balance of October 9th—of $4,006.73; balance of the note.

Q. Was that the balance of the note?

A. That was the balance of the note entered here as paid on the 9th of October.

Q. Now, then, didn't you on that day or near that day—your bank—take another note or take a note from Rappal, Sons & Company for the $4,006.73?

A. No, sir; we have no other notes of Rappal, Sons & Company.

Q. Did you take a note made by anybody else connected with that firm?

A. Well, there is a note here made by F. J. Rappal—$4,006.73.

Q. Give the facts about that.

A. That was made on October 9th.

Q. Made by F. J. Rappal, the senior member of the firm of Rappal, Sons & Company?

A. That is what this book shows; yes, sir.

Q. What is the date of the note?

A. October 9th; and it says on January 6th, 1887; that would be 90-day note.

Q. What do your books show in relation to any security?

A. Don't show any security, I believe.

Q. In point of fact it was secured, was it not, by land in Will county?

A. That I couldn't tell you; don't remember that.

Q. What has become of that note—that $4,006.73 note?

A. March 13th, paid $1,306.73.

Q. March 13th, 1886?

A. It ought to be 1886.

Q. What do the books show about that?

A. Shows that it is payable on or about January 6th, 1887.

Q. Do your books show any payment on that $4,006.73 note?

A. There is here 3–13. I should call that March 13th,
140 1886. I am going by this; $1,306.73.

Q. Paid on it?

A. Yes, sir.

Q. And the balance is still unpaid, so far as——

A. 4–17 marked here would be April 17th, $1,000; that is all.

By Mr. WRIGHT: How much is paid altogether on that?

A. 2,306.73.

By Mr. BISBEE: And the bank holds that note with the two endorsements made on it?

A. I suppose so; I haven't looked to see.

Q. The books indicate that?

A. The books indicate that; that is it.

Q. Did your bank have any other bills receivable against either F. J. Rappal, Senior, F. J. Rappal, Jr., L. L. Rappal, or the firm of Rappal, Sons & Company between July 1st, 1885, and October 9th, 1885?

A. Against them?

Q. Yes.

A. I don't know of any.

Q. And your books don't show any, do they?

A. Books don't shown any.

Q. Isn't it true that the note for $4,006.73 made by F. J. Rappal on October 9th was the payment made upon the $7,000 note on that date?

A. I can't tell you; I don't remember about that.

Q. But as a matter of fact?

A. That I can't tell you; the amounts are the same; that is all I see.

Q. Didn't the note for $4,006 and some cents, made on the 9th of October, 1885, by F. J. Rappal go the credit of Rappal, Sons & Company on that day?

A. Well, now, I can't tell you about that; it is the same amount; that is all I know.

Q. Look at the pass book which is now shown you.

A. I remember that there is an entry of that kind made; the last entry made, $4,006.73; the amounts are the same. Well, it says note.

Q. Isn't that the note of F. J. Rappal?

A. I can't tell you.

Q. After refreshing your recollection from your bills-receivable account and the pass book of Rappal, Sons & Company that you hold in your hand, don't you know that note of F. J. Rappal's is the note entered in the pass book?

141 A. No, sir; I do not.

Q. Have you any reason to doubt but what it is?

A. Well, I might think it was, yet I can't keep a year's business in my head.

Q. I am not asking you; but from an examination of the books have you any doubt?

A. Well, the amounts are the same; I can't say it is the same note.

Q. Do you believe it is the same?

(Objected to.)

A. I believe it is the same note; that is all I know; aside from that I don't know anything about it.

Q. You have no belief or thought about it otherwise, then?

A. The amounts are the same, and this is entered as a note—deposited note.

Q. Have you the letters and telegrams received from the Kansas City Bank between the first and 10th of October, 1885?

A. Yes, sir; I have them here.

Q. Will you let us see them?

A. Yes, sir.

It is agreed and stipulated between all the parties to this hearing that any letters or telegrams belonging to the Union Stock-Yards National Bank may be, after they — produced in evidence, copied into the testimony as taken by the master and marked by the master for identification, and said letters and telegrams may be retained by the bank, and will be produced if desired by counsel for the complainants at the hearing.

Q. Examine the letter which I now show you, marked Exhibit G, and state who wrote that letter to you, if any one, and whether or not you received it.

A. It is written by P. Connelly, assistant cashier of the Kansas

City Stock-Yards Bank, on the 17th of July, and the mark shows it was received on the 20th of July, 1885.

By Mr. BISBEE: Said letter is now offered in evidence, which is as follows:

142 "C. F. Morse, pres't; J. S. Chick, vice-pres't; W. S. Woods, sec'y.

Kansas City Stock-Yards Bank.

Capital stock, $200,000.

KANSAS CITY, MO., *July* 17, 1885.

Geo. E. Conrad, Esq., cas., Chicago, Ills.

DEAR SIR: Will you kindly give me in confidence a statement in detail as to the financial standing of Mess. Rappal, Sons & Co., their individual responsibility and the nature of their business, as also their reputation as business men; which favor I shall be glad to reciprocate at any time, and remain—

Yours respectfully, P. CONNELLY, *A. Cas.*"

Q. Did you answer said letter?

A. Yes, sir; answered it on the 20th of July, 1885.

Q. Have you your letter book before you? If so, give a copy of the answer.

A. I have.

Q. Please read the copy of said letter which you sent in answer thereto to the reporter.

A.—

"JULY 20TH, 1885.

P. Connelly, Esq., assistant cashier, Kansas City, Mo.

DEAR SIR: Your favor of 17th inst. received. Rappal, Sons & Company are a firm in good standing financially and otherwise; don't think they keep much ready money in the business, but F. J. Rappal owns a large farm near Joliet and is estimated worth
143 $50,000 or $60,000. He is a man of high character and has always had good credit, even before he had any means.

Yours truly, G. CONRAD, *Cashier.*"

Q. Examine the paper now shown you, marked Exhibit H, and state who sent you that communication, if any one, and when you received it.

A. In saying when I received it I should have to refer to the collection teller's book.

Q. You can do that.

A. That is the only evidence I have of it; there is no mark on it. The date is September 30th, 1885. Letter came from the Kansas City Stock-Yards Bank. According to the note teller's book it was received on October 2nd.

Q. Is the draft received in that letter, under the word Rappal,

$6,231.10, one of the drafts shown you yesterday—the one marked Exhibit D?

A. That is the first draft in this letter.

By Mr. BISBEE: I now offer that letter in evidence, which is as follows:

(Same heading as Exhibit G.)

"KANSAS CITY, Mo., 9, 30, 1885.

Union Stock-Yards Nat. Bank, Chicago, Ills.:

Enclosed for collection and credit as stated below.

Respectfully yours, P. CONNELLY,
Assistant Cashier.

Do not hold items for convenience of your customers, but in case of non-payment protest and return promptly unless otherwise instructed.

144	Rappal	6,231	10
	Keenan & H.	1,000	
1st Nat.		149	
Paston, Sh. & Co.		400	
Geo. Adams & Burke		7,275	01
Fowler		1,037	48
Darlington		1,000	
		17,092	59"

Q. Examine the paper I now show you and state what it is, who wrote it, who sent it, and when you received it, and the date of it.

A. It is dated October 2nd, 1885; came from Kansas City Stock-Yards Bank; received October 5th.

Q. Is the draft mentioned in said letter, under the word Rappal, for $19,505.62, the same draft that was protested or was produced in evidence yesterday, marked Exhibit E?

A. $19,505.62; yes, sir.

Q. Have you any other letter in your possession enclosing the said draft for 19 thousand odd dollars?

A. Enclosing said draft?

Q. Yes.

A. You mean letter that they——

Q. No; at any time.

A. No; this is the original letter.

By Mr. BISBEE: I now offer said letter in evidence as Exhibit I, and it is as follows:

(Same heading as Exhibit G.)

"KANSAS CITY, Mo., 10, 2, 1885.

Union Stock — Nat. Bank, Chicago, Ill.:

Enclosed for collection and credit as stated below.

145 Respectfully yours, P. CONNELLY,
Assistant Cashier.

Do not hold items for convenience of your customers, but in case of non-payment protest and return promptly unless otherwise instructed.

Geo. Adams, Burke & Co.	13,617	14
Keenan & H.	291	40
You	1,000	
Thos. Armour	50	
McIlhany	1,001	
Rappal	19,505	62
Stafford	2,500	
Swift	4,512	89
	42,478	05"

—. A moment ago didn't you state that the draft for $6,231.10 was received on the 2nd?

A. It was received on the 2nd in the original entry; here it was carried forward over night and returned on the 3rd; returned 10, 3, '85—October 3rd, 1885.

Q. So that item is entered twice in your——

A. We carry forward all that are protested the next day.

Q. On your books?

A. Yes, sir.

Q. On what day of the week was October 2nd?

A. Friday.

Q. And October 3rd was Saturday?

A. Yes, sir.

Q. And October 4th was Sunday?

A. Yes, sir.

Q. And October 5th was Monday?

A. Yes, sir.

Q. Is this draft for 19 thousand and odd dollars; does it appear on the bills-receivable book under any other date than October 5th?

A. Yes, sir; I presume so; returned 10, 6. I should think they would carry it forward, but as they decided positively that
146 they wouldn't pay it that day he may not have carried it forward returned next morning.

Q. Does it appear carried forward on your books?

A. No, sir; it doesn't appear on here.

Q. It only appears, then, under date of October 5th in your book?

A. Yes, sir.

Q. And it is carried out in pencil returned October 6th?

A. October 6th; yes, sir; protest not finished until the following morning; protest notice not made out, at least.

Q. Who keeps these books?

A. J. R. Caldwell.

Q. Is he now in the bank?

A. Yes, sir.

Q. In your employ?

A. Yes, sir.

Q. Can you state why he entered the draft, Exhibit D, for $6,231.10, under date of October 2nd and October 3rd, upon his memorandum book and why he only entered the draft for $19,505.62, Exhibit E, only once, under date of October 5th?

A. The draft of 62 hundred and odd dollars came in and payment was refused and it was protested in the ordinary course; that, of course, we held over until the next morning and returned it; that is the usual course. The 19 thousand came in on Monday and was protested, and there had been so many telegrams sent back and forth in regard to it that there was no need of carrying it, because it had been decided they couldn't pay it and it was returned. I don't know of any reason why he shouldn't carry it over, but if this was not to be paid I suppose he thought no need to carry it over.

Q. The draft of October 3rd, 1885, for $691.70 was received on the 5th, was it?

A. Yes, sir.

Q. And it was protested, was it, on that day?

A. Protested on the 5th.

Q. Now, does that appear again upon your books?

147 A. I couldn't tell you; I should judge not. You see telegrams were sent back and forth that day in regard to it; that will explain why it was not carried—did not carry everything forward.

Q. Do you know when the clerk Caldwell makes the entry upon this book with reference to the time that the drafts are received?

A. Letters are opened as they come from the mail and notes checked off, and they are turned over to him for immediate entry.

Q. That is, so far as you know. You do not know whether that draft for 19 thousand and odd dollars was received on Saturday or Monday from any recollection about it?

A. I am quite positive it was received on Monday from the fact that my attention was called by telegram from Mr. Connelly asking us to remit 20 odd thousand dollars to the banks down-town for him. Come to look over his account we found we had no such money, and my telegrams will explain that. Then I telegraphed him that Rappals' draft of Saturday had not been paid—the first one there.

Q. Examine the paper which I now show you and state its date and who wrote it and when you received it.

Q. Letter dated October 3rd, 1885; made by the Kansas City Stock-Yards Bank with draft of $691.70; received October 5th.

By Mr. BISBEE: The same is offered in evidence as Exhibit J, which is as follows:

(Same heading as Exhibit G.)

"KANSAS CITY, MO., *Oct.* 3, 1885.

U. St'k-Y'ds National Bank, Chicago, Ill.:

Enclosed for collection and credit as stated below.

148 Respectfully yours, P. CONNELLY,
Assistant Cashier.

Do not hold items for convenience of your customers, but in case of non-payment protest and return promptly unless otherwise instructed.

J. S. McFarland	2,001 87
Paxson, Shattuck & Co.	450
Rappal, Sons & Co.	691 70
	3,143 57"

Q. Is the draft for $691.70 mentioned in that letter the same as Exhibit F?

A. Yes, sir; $691.70—the same draft.

Q. Examine the telegram which I now show you, dated 10, 5, '85, and state what month that signifies in telegraphing business.

A. That is October 5th, 1885, Kansas City.

Q. Who sent you that telegram and when did you receive it?

A. P. Connelly, cashier; received the same day.

Q. What time in the day?

A. My recollection of it is about—the date is 10.36 a. m.; my recollection of it is it was before noon. That is all.

Q. That telegram indicates, does it, that it was sent from Kansas City at 10.36 of the forenoon of October 5th?

A. October 5th; yes, sir.

By Mr. BISBEE: The same is offered in evidence as Exhibit K, which is as follows:

"Received at Union Stock-Yards, Ills., 10, 5, 1885.
Dated St'k-Y'ds, Kans. City, Mo., 5.

To G. E. Conrad, cash'r:

Is Rappal nineteen thousand odd paid? Letter October third.

P. CONNELLY, *A. Cash'r.*"

149 Q. Did you answer that telegram?

A. Yes, sir.

Q. Have you a copy of your answer?

A. Yes, sir.

Q. Please read it to the reporter.

A. I have quite a distinct recollection of my telegraphing Mr. Connelly, because it was the first time my attention had been called to any draft being protested. I didn't know before he telegraphed me, or at least until I telegraphed him in regard to not having money enough to make his remittance, that the Rappals' draft of Saturday had been protested, and I immediately sent out to make inquiries why they were not paid, and it was all done before noon.

Q. You sent your telegram before noon of Monday?

A. Yes, sir; just as soon as I found out my telegram to him October 5th, 1885:

"OCTOBER 5TH, 1885.

"P. Connelly, assistant cashier, Kansas City:

"Say cattle were sold Saturday, and they hold proceeds against account of Bone & Co. Drafts, 19 thousand odd and 600 odd, go to protest.

"G. E. CONRAD, *Cashier.*"

When I made these inquiries in regard to this draft Mr. Rappal told me about the firm of Bone & Co. I got it, but it ought to be Bowen & Company.

Q. What previous telegram did you send Mr. Connelly on this matter?

—. I was thinking I sent him one in regard to the $631, but I guess I didn't; I guess that is the first. I had no copy of it; I got that from the telegraph office.

Q. The question is, Did you send any telegram to Mr. Connelly, of the Kansas City Stock-Yards Bank, prior to the one which you have just given; if so, what telegram did you send him?

150 A. This one appears to be marked October 3rd, 1885:

"KANSAS CITY STOCK-YARDS BANK, KANSAS CITY, MO.

"Rappals, 6,200 not paid; have nothing to remit Commercial Bank.

"G. E. CONRAD, *Cashier.*"

That is a copy of the message I sent. That was not dated, and whether it is October 3rd or 5th I am not able to say, only they took it out of theirs of October 3rd.

Q. You sent that telegram on October 3rd, as you have stated?

A. I sent the telegram; that is a copy of the telegram I sent, but I am not sure about its going that day, but they had it among their messages of that day.

By Mr. BROWN: Who had it?

A. Western Union Company.

Q. Where?

A. They have them on file; they gave me a copy of it.

By Mr. BISBEE: They found it there?

A. We had no copy of it on our books; that is merely notifying him of the non-payment of the drafts. We notify them of all drafts that go to protest. I presume I signed that without reading it; I didn't——

Q. You sent this telegram in pursuance of your general instructions to notify them of any drafts that were not paid?

A. Yes, sir.

Q. You didn't telegraph the bank that the draft was protested, did you?

A. That says Rappals' 6,200 not paid; have nothing to remit Commercial National.

Q. You never did telegraph them that the $6,200 — was protested, did you?

A. That I can't say, whether we did or not; have no recollection of it; our intention was to do it.

Q. What is the date of the next telegram or letter in your possession in your letter book to P. Connelly, of the Kansas City Bank? Examine the telegram now shown you and state who sent it and when you received —.

A. Dated Kansas City, October 5th, 1885; received here at 3.08 p. m., marked P. Connelly, acting cashier.

151 Q. In the afternoon of Monday, was it?

A. Monday, October 5th; yes, sir.

Q. You received that that afternoon?

A. Yes, sir.

By Mr. BISBEE: The same is offered in evidence as Exhibit L, which is as follows:

"Dated St'k-Y'ds, Kans. City, 5.
Rec'd at Union Stock-Yards, Ill., Oct. 5, 1885.

To E. Conrad, cash'r:

Get proceeds thirty-four cars cattle from Rappal, credit amount on draft, & advise at once.

P. CONNELLY,
Cash'r, Acting Cash'r."

(In pencil:) "Held against Bone & Co. 2–C. Oct. 5,'85, 4 p. m."

Q. Did you answer that telegram, and have you a copy of your answer? If so, please read it.

A. I answered it as follows:

"OCTOBER 5TH, 1885.

P. Connelly, acting cashier, Kansas City, Mo.:

Firm say cattle were sold Saturday, and they hold proceeds against account of Bone & Co.; drafts, 19 thousand odd and 600 odd, protested; don't think they have anything to pay with.

G. E. CONRAD, *Cashier.*"

Q. Examine the paper now shown you, dated October 6th, 1885, and state who sent it to you and when you received it.

A. Letter dated October 6th, 1885, from the Kansas City Stock-Yards Bank, received October 8th.

Q. And it appears on your books, does it?

A. Yes, sir.

Q. Now, where is the draft mentioned in that letter on Rappal, Sons & Company of $19,505, 10 d. d.; what is it?

152 A. Draft of Rappal, Sons & Company, $19,505, 10 days' date.

Q. Was that draft drawn by F. J. Rappal?

A. Couldn't tell you.

Q. No information about that?

A. No.

Q. Was it paid?

A. No, sir; not on the 8th; marked gone to protest. It is simply marked protested; that is the only memoranda that is on that.

Q. Now, is not that the fact, that F. J. Rappal, after the first draft was protested, gave another on his firm, which was sent by the Kansas City Stock-Yards Bank to you for collection, and was not that draft drawn on 10 days' date?

A. Can't tell you anything about it.

Q. You say it was not paid?

A. It was marked protested, I think.

By Mr. BISBEE: That letter is offered in evidence as Exhibit M, and is as follows:

(Heading same as Exhibit G.)

"KANSAS CITY, Mo., *Oct.* 6, 1885.

U. S. Y'ds National Bank, Chicago, Ill.:

Enclosed for collection and credit as stated below.

Respectfully yours, P. CONNELLY,
Assistant Cashier.

Do not hold for convenience, but in case of non-payment protest and return promptly, unless otherwise instructed.

Swift & Co. ----------	8,859 93	
Rappal, Sons & Co.-----	19,505	10 d. d.
Keenan & Hancock----	1,000	
	29,364 93"	

Q. Examine the letter I now show you, dated October 6th, 1885, and state who wrote it and when you received it.

A. It was written by P. Connelly, acting cashier, dated Kansas City, October, 1885; received on October 8th.

153 By Mr. BISBEE: The same is offered in evidence as Exhibit N, and is as follows:

(Heading same as Exhibit G.)

"KANSAS CITY, Mo., *Oct.* 6, 1885.

"Geo. E. Conrad, Esq., cas., Chicago, Ill.

"DEAR SIR: On payment of draft on Swift & Co., $8,859.93, please deposit $8,000 for our credit with Con'l Nat'l B'k, Chicago.

"We expect that on arrival of Mr. Rappal the drafts on Rappal, Sons & Co., $3,234.34 & $19,505, will be paid; in any event when due.

"If Rappal, Sons & Co. are in any trouble financially we will be greatly obliged for any information you will give us.

"Yours respectfully, P. CONNELLY, *A. Cas.*"

Q. Did you answer that letter? If so, please read your answer.
A.—

"OCTOBER 8TH, 1885.

"P. Connelly, acting cashier, Kansas City, Mo.

"DEAR SIR: Your favor of 6th inst. received. F. J. Rappal has not been at the bank since he returned, and the firm have no money with us. I don't expect the two drafts you mentioned will be paid at maturity; at least they refuse to accept them. I cannot tell you what condition they are in or what they propose to do, but I judge they are not in condition to pay anything just now.

"Yours truly, G. E. CONRAD, *Cashier.*"

154 Q. Does the letter of the 6th, Exhibit N, Mr. Conrad, and you reply of the 8th, which you have just read, refer to the ten-day draft which F. J. Rappal himself drew on his firm at the Union Stock-Yards for $19,505?

A. I am unable to tell you who the drafts are drawn by; there is nothing to show that. His letter refers to one draft of $19,505 and 32 hundred odd dollars on Rappal, Sons & Company.

Q. Isn't the $19,505 the ten-day draft mentioned, about which you have testified?

A. It is the ten-day draft; yes, sir.

Q. What is the date of the next communication, after the one you just read, in your letter-press copy book, to the Kansas City Stock-Yards Bank?

A. I should think October 15th, but it has no relation to this matter.

Q. Have you one of October 12th?

A. I don't see any.

Q. Examine the telegram I now show and state when you received it and who sent it.

A. It is a telegram of October 12th, 1884, intended for 1885, comes from P. Connelly, acting cashier.

By Mr. BISBEE: The same is offered in evidence as Exhibit O' which is as follows:

"Received at Union Stock-Yards, Ills., October 12th, 1884.

"Dated St'k-Y'ds, Kans. City, Mo., 12.

"To Geo. E. Conrad, cash'r:

"If no objection, what was total of Rappals' deposit October third & fifth.

"P. CONNELLY, *A. Cash'r.*"

Q. Did you answer that telegram?

A. My impression is I did not.

Q. Do you find any copy of an answer in your letter book?

A. No, sir; I do not.

Q. Who is the president of the Kansas City Stock-Yards Bank?

A. My recollection is J. S. Chick. Since the reorganization I don't know.

Q. Who was president in October, 1885?
A. My recollection is Mr. Chick.
Q. Was it not C. F. Morse?
155 A. I am mistaken; since the reorganization he has been president.
Q. Examine the telegram now shown you, dated October 13th, 1885, and state who sent it and when you received it, if at all.
A. That is the telegram from C. F. Morse, dated Chicago; C. F. Morse, G. M.—that is, the general manager.
Q. He was the president of the Kansas City Stock-Yards Bank at that time, was he?
A. I think he was; I am not positive.
Q. And you received that on the day it bears date?
A. Yes, sir; marked that day.

By Mr. BISBEE: The same is offered in evidence as Exhibit P, and is as follows:

"Received at Union Stock-Yards, Ills., Oct. 13, 1885.
"Dated Chicago, Ills., 13.
"To Union Stock-Y'ds Bank:
"Please wire me fully to Grand Pacific facts as to Rappal, Sons & Co.'s financial standing; have received notice from Connelly that their drafts have been protested.
"C. F. MORSE, *G. M.*"

Q. What was your answer to it?
A. I have no copy of the answer. The telegram was not answered fully; I have a recollection of that. I thought if he was so near by he could come up and find out if he wanted an answer.
Q. You didn't answer it fully?
A. No, sir; I didn't give him any information on the subject.
Q. Examine the telegram I now show you and state who sent it and when you received it.
A. Dated October 17th, 1885, Kansas City, signed P. Connelly, assistant cashier; received October 17th.

By Mr. BISBEE: The same is offered in evidence as Exhibit Q, and is as follows:

"Received at Union Stock-Yards, Ills., Oct. 17, 1885.
"Dated St'k-Y'ds, city, 17.
"To G. E. Conrad:
"If Rappal refuses nineteen thousand draft, wire us.
"P. CONNELLY, *A. Cash.*"

156 Q. What answer did you make to that?
A. I have no copy of it, but a memorandum on that says, refused; that refers to the draft.
Q. That — the ten-day draft?
A. I should judge so; draft of nineteen thousand, he says.
Q. I will ask you if the Kansas City Stock-Yards Bank paid you

the protest fees on the three drafts that have been offered in evidence as Exhibits D, E and F?

A. Yes; these letters show they were paid.

Q. By the Kansas City Stock-Yards Bank?

A. Yes, sir.

Q. In your communication to the Kansas City Stock-Yards Bank of October 3rd, in relation to the first draft of $6,000 and odd dollars, you say, in your telegram, "Draft not paid." Is that the way you replied to drafts previously sent by that bank to you that were not paid?

A. Yes, sir.

Q. Didn't you say in relation to other drafts that payment was refused?

A. No; we did not; we don't put them to any extra expense; make short telegrams always; say draft not paid; that is all.

Q. Didn't you say before that drafts were protested?

A. That is not our custom; might possibly do it; but any way the idea is to give them notice that the drafts are not paid.

Q. Did you produce with you the deposit slips made by Rappal, Sons and Company from October 1st to the 10th, inclusive?

A. Yes, sir.

Q. Will you let me see them?

A. Yes, sir.

Q. When you telegraphed as you did, on October 3rd, "Draft not paid," did you mean by that that the draft never would be paid or might be paid later on?

A. Drafts come in, half dozen of them a day. If drafts are thrown out we merely notify the draft without reference to form. If the draft is not paid we notify them that the draft is not paid; that is all we intend to do; they might come in ten minutes after and pay it.

157 Q. I show you ten deposit tickets, commencing October 1st, 1885, ending October 9th, 1885; did you produce those 10 tickets this morning from the bank of which you are cashier?

A. I did.

Q. You may read now, giving the dates of each deposit ticket and the items which were deposited by Rappal, Sons & Company, as per those tickets, on each day from October 1st to October 9th, inclusive.

A—

Deposited October 1st	$1,061 15	
	1,344 94	
	42 60	
	65 32	
	4,439 60	
	144 00	
		$8,097 61
October 2nd	59 34	
	6,649 50	
		6,708 84

October 3rd	155 00	
	10,227 10	
	2,673 90	
		13,056 00
N. Morris:		
October 3rd		7,574 43
October 3rd	937 20	
	1,723 20	
		2,660 40
October 5th	6,301 32	
	131 40	
	11 90	
		6,444 62
October 6th		7,596 37
October 6th		2,583 52
October 8th		26
October 9th note		4,006 73

Q. In relation to the N. Morris item was not that a sale ticket deposited in your bank by Rappal, Sons & Company for cattle sold them?

158 JULY 17TH, 1886.

Counsel present as before.

GEORGE E. CONRAD recalled for complainant:

By Mr. BISBEE: Since your examination yesterday have you referred to the books of the bank of which you are cashier with reference to the bills-receivable account so that you can state what bills receivable the bank held against Rappal, Sons & Company as early as the first of July, 1885?

A. Appears to be a note of Rappal, Sons & Company; note $7,000, secured by note; don't say what note.

Q. First give the date of that note.

A. Given June 13th, 1885; signed by Rappal, Sons & Company.

Q. The amount.

A. $7,000.

Q. Payable when?

A. It was payable July 16th.

Q. And that was under discount on July 1st, was it?

A. Under discount July 1st.

Q. And now what do you say about any security connected with that $7,000 note?

A. Note attached to it; don't say where the note was; it was collateral note.

Q. Just state exactly what your books show.

A. That is what it shows. Dated July 13th; signed by Rappal, Sons & Company; said note—that means collateral note—attached to it, some other party's notes, and the amount is $7,000, due July 16th.

Q. Was that the only note under discount on that date, July 1st, made by Rappal, Sons & Company to your bank?

A. Yes, sir.
Q. Now, then, that note, you say, matured July 16th?
A. Yes, sir.

—. ——.

159 A. That I couldn't tell you.
Q. Isn't that the reason why that appears on the ticket?
A. They put it on the ticket themselves. I don't know what it is for.
Q. It don't indicate anything to you, then?
A. It might be—no; it don't indicate anything; might be check or ticket.
Q. Would it have been on that deposit ticket had it not been a sale ticket deposited by Rappal, Sons & Company?
A. I haven't any idea what it is for any more than you have.
Q. Do you know whether the 10 thousand odd dollars deposited was a sales ticket or a check?
A. No, sir; I don't know what it was.
Q. Look at the ticket of October 3rd, where the deposit exceeds $13,000; state if any of that was sales tickets.
A. Can't tell you about that.
Q. Mr. Conrad, the business of your bank is largely paying drafts for live stock commission men at the stock-yards, is it not, and receiving deposits for cattle sold by them—cattle and hogs?
A. You mean paying drafts? We receive drafts for collection.
Q. I mean receiving drafts for collection and collecting them.
A. That is only a small part of the business.
Q. You do that very largely, don't you?
A. Yes, sir.
Q. At the stock-yards where you do business your principal business is with live stock commission men?
A. Yes, sir.
Q. And it is customary, isn't it, for shippers of cattle to commission houses at the stock-yards to draw drafts against their consignments, which come through your bank for collection?

By Mr. BROWN: Counsel for the bank objects to the form of the question as leading and assuming things not proven, and desires to give notice that he will insist upon the hearing upon the objection to questions unless they are made to complainants' own witness in proper form.

A. It is in some cases.
Q. Isn't it a pretty general custom?
160 A. What would you call general?
Q. I mean isn't it quite common for shippers, who ship cattle to commission men at the stock-yards where you do business to draw drafts against their consignments, which drafts come through your bank for collection?
A. Yes, sir.
Q. Isn't that quite universal?
A. It is quite common; probably covers a quarter of the business.

Q. Of what business?
A. Of all sales.
Q. Of all sales of cattle, you mean?
A. I should think about that.
Q. Now, isn't it quite universal for commission houses—live stock commission houses—at the stock-yards to sell cattle to certain shippers and to butchers at the yard and receive a sales ticket from the purchaser of the cattle and deposit that sales ticket with you to their credit?

(Objected to as leading.)

Q. Is it or is it not?
A. I should say 3 or 4 firms pay for all cattle in that way.
Q. What firms are they?
A. You mean at any of the banks or ours?
Q. I mean at yours.
A. I think Waixel & Nelson Morris.
Q. Armour & Company?
A. Armour; yes, sir; don't know of any others.
Q. It is quite common, isn't it, almost universal, for those three firms when the buy cattle to give a sales ticket to the commission house *and the commission house* instead of a check, and they deposit that sales ticket in your bank and you collect the money of Armour, Waixel, or Morris?

(Objected to as leading.)

A. It is not done in all cases, but I think it is the general custom.
Q. Now, then, in this case isn't it true that the cattle that Rappal, Sons & Company sold out of these consignments from A. J. Gillespie & Company that they sold to Nels. Morris and Armour; didn't they receive a sales ticket, and didn't they deposit that sales ticket
161 in your bank, and didn't you collect the money of Nels. Morris and Armour?

(Question objected to as leading and an attempt to cross-examine his own witness, and assuming a matter not proven and directly denied by all of the defendants, that the consignment was from A. J. Gillespie & Company.)

A. I am unable to state how they sold their cattle or what they got for them.
Q. I am asking you in this case if the money that was deposited in your bank for cattle by Rappal, Sons & Company to Armour and to Nels. Morris was not deposited in your bank by a duplicate-sales ticket?
A. I don't know they sold any cattle to Armour and Morris. I don't know what they got in payment.
Q. Assuming that a large portion of the 810 head of cattle received on October 3rd, 1885, were sold to Armour and Nels. Morris, was the proceeds of those cattle deposited in your bank on duplicate ticket?

(Objected to because it is improper in form. Complainant has no right to assume and ask the witness anything.)

A. I am unable to answer.

Q. If they were deposited by sales tickets did your bank collect of Nels. Morris and Armour & Company the proceeds of those sales?

A. That I couldn't say. I don't know.

Q. You don't know whether he did or not?

A. No, sir.

Q. You don't know if you received sales tickets from Rappal, Sons & Company on the 3rd of October and gave Rappal, Sons & Company credit for them in their bank account, and don't know whether you collected it or not?

A. Don't know whether we received it or not, or whether we collected it.

Q. I don't ask you if you received it. If you received it did you collect it in the course of business as the cashier of that bank?

A. As a natural course of business if I received any tickets we collected them.

162 Q. Then if, on the 3rd of October, 1885, you received from Rappal, Sons & Company sales tickets from Nels. Morris and from Armour & Company you collected the money from Nels. Morris and Armour & Company, didn't you?

(Objected to as leading.)

A. If I received any tickets on Armour from anybody we collected them, of course.

Q. You did?

A. We would, of course.

Q. Was the firm of Rappal, Sons & Company engaged in any other business at the stock-yards than dealing in cattle?

A. I don't know of any.

Q. Did Rappal, Sons & Company draw a check or checks on their account, payable to your bank, to pay their overdraft which existed October 1st and 2nd, 1885?

A. I don't know how they could do that; if a man has got his account overdrawn he can't draw a check to pay it.

Q. I am asking you if they did?

A. I don't know of anything; no, not to my knowledge.

Q. Did they draw any check to pay you any portion of that $7,000 note between the 1st and 10th of October, 1885?

A. I would have to refer to the books. I don't know how those were paid; the payments were made; don't know whether paid in currency, check, or what it was.

Cross-examination by Mr. BROWN:

Q. Mr. Conrad, you have had considerable business with the Kansas City Stock-Yards Bank, haven't you?

A. Yes, sir; did a large business with them.

Q. What is the usual course of mail between Kansas City Stock-Yards Bank and the Union Stock-Yards National Bank at the stock yards? How long would it take, in other words, for a letter to

go from Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank?

A. We usually receive our letters on the 2nd day after they are written—that is, a letter dated the 6th we usually receive
163 about the 8th. They would naturally make their paper in the afternoon, and as I understand their mail—I don't know whether mail leaves there at night or next morning, but it usually comes to us in the half past ten or 11 o'clock mail the second day.

Q. Therefore a letter sent from Kansas City the 2nd of October would, in the natural course of mail, get to the stock-yards on the morning of the 4th?

A. On the morning of the 4th.

Q. If the 4th were Sunday when would it be delivered at the bank?

A. Monday, the 5th.

Q. There has been introduced by the complainant a letter from the Kansas City Stock-Yards Bank mentioning a draft enclosed for $19,000, which letter is dated October 2nd; when, in the ordinary course of mail, would that have been delivered to the Union Stock-Yards National Bank? The letter is Exhibit I.

A. This is written on Friday, October 2nd; would be due at the stock-yards Monday morning, October 5th.

Q. And that, as I understand your direct examination, agrees with the original entry in your collection register?

A. Yes, sir.

Q. Of the reception of that?

A. Yes, sir.

By Mr. WRIGHT: Suppose that were sent from Kansas City about 9 o'clock on Friday morning, when would it get to the Chicago Stock-Yards?

A. I don't know anything about the mails.

Q. When would it get here, Mr. Conrad?

By Mr. BROWN: I object to this.

By the MASTER: Mr. Wright will wait till cross-examination is closed, and then put any further question he desires.

By Mr. BROWN: Mr. Chourchouse testified yesterday that the draft referred to in this letter, $19,505.62, was presented at the office of Rappal, Sons & Company upon Saturday, October 3rd; could that be possible?

A. No, sir; it could not.

164 Q. Was it presented upon October 3rd, at Rappal, Sons & Company's office?

A. It couldn't have been received by us until Monday morning. Mr. Connelly in his telegram says it was enclosed in his letter of the 3rd, but I think he is mistaken in that, unless he mentions this letter.

Q. You have read certain deposit tickets; what are deposit tickets?

A. They are made up by the depositors.

Q. And what is the course of business of the bank in relation to them?

A. They check off the different amounts and see that they get value received, or the amount stated in them.

Q. Who does that?

A. The receiving teller.

Q. Then what becomes of the deposit tickets?

A. They are passed from him to the book-keeper and go to the credit of the depositor.

Q. And then what is done with them?

A. Then they are filed away.

Q. They are slips of paper, then, presented by the depositors, with the amount of currency or checks or whatever he may deposit; it is checked over by the receiving teller, and then passed over to the book-keeper, showing that that amount has been deposited?

A. He enters the total amount on the depositor's book.

Redirect examination:

Q. Have you any recollection in your mind as to when that large draft of $19,505 was received at your bank?

A. I have from this fact, Mr. Bisbee, as I told you before: The first that I knew of a protested draft from Kansas City was, I think, the $3,100 draft, whatever it was. My attention was called to it Monday morning, October 5th, by a request from Mr. Connelly to deposit a large amount of money for him, and there was not enough to his credit, and I found that the draft had been protested and these drafts were just in, being entered by the teller in his book at that time.

Q. It is true, isn't it, that if a draft was mailed on Friday, the 2nd day of October, if it was mailed in the morning, it would reach your bank Saturday morning, on the 3rd?

165 A. No, sir; I never saw mail come that quick. Mailed Friday morning?

Q. Yes.

A. Don't know anything about the time in Kansas City in that regard or anything about it.

Q. If it was mailed Friday night, on the 2nd, it would reach your bank in the afternoon of Saturday, wouldn't it?

A. I am unable to state or tell anything about the trains or mails in Kansas City; can only tell how our letters come to us. A letter dated, for instance, the 6th comes to us on the 8th about 11 o'clock, and a letter dated on the 2nd would come to us about 11 o'clock or half past 10 on the 4th; I don't know what time they leave Kansas city; have no idea.

By Mr. BROWN: What time does the bank close on Saturday?

A. On Saturday our bank closes at 1 o'clock.

166 JULY 17TH, 1886.

ELMER WASHBURN recalled:

By Mr. BISBEE:

Q. Since your examination of yesterday have you examined your bills-receivable account?

A. I have not; not until I saw it here this morning.

Q. Have you the account before you?

A. Yes, sir. When I got there this morning this book was gone.

Q. You may go on now and state, after refreshing your recollection from the account, all the transactions your bank had with Rappal, Sons & Company in relation to bills receivable between July 1st and October 10th, 1885.

A. On July 1st we held a note against Rappal, Sons & Company made by them, dated the 13th of June, due the 16th of July, paid on the 28th of July; undoubtedly paid with a check, as is the custom. Then we took another note on the 28th of July, dated the 17th of July, for $7,000, due on the 17th of September, and that was paid—on the 5th of October, $1,060; on the 6th, $1,933.27; on the 9th, $4,006.73, as appears from this book—not from recollection, but as appears from this book.

Q. How was it finally closed up; wasn't there a note taken of $4,006.73, signed by F. J. Rappal, on the 9th of October?

A. So appears from this book, and that is my recollection also.

Q. Then yesterday when you were testifying from recollection about the amount being about $6,000 you were mistaken; it was $4,006.73?

A. Yes, sir; I was mistaken; and the way I made the mistake was this: the Stock-Yard & Transit Company took a note about the same time we did that was in amount larger than this; it was about $6,000, but ours was less than that.

Q. Did you, on the 9th of October, take a note signed by F. J. Rappal, the senior member of the firm, for $4,006.73 and discount it, to close up that $7,000 note and your matters with Rappal, Sons & Company, and did you take security for that $4,000 note on a farm in Will county?

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A. I can't say from recollection whether it was on the 9th of October; that was undoubtedly the day on which that note was taken; we took such a note, and as to closing up the old one, that new note formed the basis of a credit upon which he checked and paid the balance due on the old one, that appears from the record.

Q. On the same day?

A. I suppose it is on the 9th.

Q. At the time you took that note of $4,006.73, at the same time Mr. Rappal gave a note to the Union Stock-Yard & Transit Company for about $5,800, both of which notes were secured on real estate in Will county?

A. Yes, sir. I don't pretend to testify certainly as to the amount of that note, but it was somewhere around that, and it was secured by real estate in Will county.

Q. Do you know of any assets owned by Rappal, Sons & Company or either of them excepting the farm upon which you took security at that time?

A. Not of my positive knowledge; I understood there were other assets.

Q. What other assets?

A. Quite a large sum of money due them from Bowen & Company.

Q. You understood that from them; and that ended the account with you in your bank with the firm of Rappal, Sons & Company?

A. It wouldn't appear from this, but I presume it did.

Q. And after that a new account was opened in the bank in the name of——

A. L. L. Rappal, trustee.

Q. Which was continued until last June?

A. Continued until they formed a new copartnership.

Q. It is quite customary, is it not, Mr. Washburn, for parties outside of this city to ship and consign cattle to live-stock commission men or houses at the stock-yards and draw against the consignment, and those drafts frequently come through your bank for collection?

168 A. Yes, sir; I should say that 50% of all the live stock shipped there, that pay for — before it gets there.

Q. By drafts drawn against the consignment before the stock gets to the stock-yards?

A. Yes, sir.

Q. And a large or quite a large portion of your banking business consists, does it, in collecting drafts for outside parties in that way and receiving deposits from live-stock men?

A. Yes, sir.

Q. Quite a portion of your business?

A. Yes, sir.

Q. And has for some years last past, has it?

A. Yes, sir.

Q. Is it quite a common thing for parties at the stock-yards who sell cattle to Armour and Company and to Nels. Morris to deposit sales tickets given by those firms in your bank instead of checks?

A. Well, I am hesitating because I hardly know whether to say it is quite common or not.

Q. State what the fact is, then.

A. It is sometimes done.

Q. Isn't it, so far as those two houses are concerned, quite common?

A. A great deal of that kind of business is done with pigs, in the sale of hogs—pig dealers.

Q. You have known Rappal, Sons & Company as depositors in that bank, have you, ever since you have been president of it?

A. Yes, sir; nearly that. They commenced business there perhaps 2 months after I took charge of it.

Q. Did they have any other business excepting the live stock commission business at the stock-yards?

A. I so understood it. If they did business with any other bank I didn't know it. I think I have heard them say they had some business at the Joliet bank.

Cross-examination by Mr. BROWN:

Q. Isn't it a fact that sometimes during the course of your business, or sometimes in the course of business at the stock-yards,
169 drafts are drawn from the proceeds of sales by persons other than the consignors or owners of the cattle by brokers or commission men or otherwise at the other end of the route?

A. Yes, sir; I think so.

Q. I will ask you whether you have told Mr. Bisbee that considerable business was done at the stock-yards and done by your bank in the collection of drafts drawn on account of sales of cattle by commission men at the stock-yards? Is there anything which shows to your bank any connection between any particular draft or any particular sale and commission men?

A. Very rarely have any knowledge of the purpose for which the draft is drawn.

Q. Or any connection between the draft and any particular sale or shipment of cattle?

A. Not that I ever witnessed. I think I have seen a draft come in occasionally with a pencil mark upon it—40 head or 50 head or 20 head of cattle.

Q. Is that usual?

A. No; very rare.

Q. Does your bank undertake or promise or agree with anybody to connect drafts with any particular shipments or proceeds of any particular sales?

A. Neither implied or expressed in anything that we do.

Redirect examination:

Q. Did your bank appropriate the money that was deposited by Rappal, Sons & Company in your bank on the 2nd and 3rd of October and on the 6th of October in payment of the overdraft which existed on the 1st and 2nd of October of Rappal, Sons & Company?

A. Why, no, in the sense that your question would seem to imply. Rappal, Sons & Company were overdrawn; they made deposits and then they were not overdrawn.

Q. And those deposits that they made between the 2nd of October and the 6th were kept by you to discharge or liquidate the overdraft that they had at that time, were they not?

A. My answer to that is that they were overdrawn and
170 they deposited and then they were not overdrawn.

Q. Isn't it true, Mr. Washburn, that the money they did deposit between the 2nd and the 6th of October was kept by the bank, and to that extent that it paid off their overdraft to your bank; isn't that true?

A. They deposited money and cancelled the overdraft deposited and checked out some, I think.

Q. During that period of time their overdraft was paid off, was it?

A. Well, I don't want to be confined to dates, because I will have to look it up to testify positively.

Q. Isn't it true that their overdraft was made up after the 2nd of October and paid?

A. They made up their overdraft, made their overdraft good on or about that time.

Q. By their deposits?

A. By their deposits.

Q. Do you remember sending a notice signed by A. J. Gillespie & Company in October—notice in relation to their——

A. I don't remember it; no.

Q. Did you not know that the money deposited by Rappal, Sons & Company between the 2nd and 6th of October was the proceeds of sales of live stock by them as commission merchants?

A. I have no knowledge whatever what it was; don't know where they got their money from or where they got their checks or anything else they may have deposited; no knowledge whatever.

Q. Do you know of any other source from which they could get money except from selling live stock?

A. I don't know.

Q. You don't know of any other source, do you?

A. Oh, no—yes, I do, too. I knew that Mr. Rappal had sold a valuable farm at one time and had taken part payment in notes, and I knew that he had at one time thought he would sell those notes to raise money to put in his business; other times he
171 thought he would sell some property for money to put in his business, and I know about that time they were trying to raise money. It wouldn't be correct for me to say that I didn't know of any other source from which he might raise money.

By Mr. BROWN: What you mean to say concerning the making up of the overdraft is that on the 1st of October Rappal, Sons & Company were overdrawn, and that between the 1st of October and the 10th of October their deposits exceeded their checks to such an amount that they were not overdrawn; is not that a correct statement?

A. That is what I would say; as for the 1st of October, I don't remember.

—. They were overdrawn, but their deposits so much exceeded their checks within a certain period just before the closing of the account that they ceased to be overdrawn?

A. That is what I mean.

Q. Is it or is it not a fact that Mr. Rappal, to your knowledge, had credit with other banks—with the Joliet Bank or other banks—in reference to his ability to get money?

A. I know he stood in good credit. He was in good standing at that bank. I know they spoke well of him at all times, and I know from what I was told that he had credit at the bank—First National Bank at Joliet.

172 JULY 17TH, 1885.

F. J. RAPPAL, being first duly sworn, testified on behalf of complainants as follows:

By Mr. BISBEE: You were a member of the firm of Rappal, Sons & Company in 1885, were you not?

A. Yes, sir.
Q. Senior member of that firm?
A. Yes, sir.
Q. The firm consisted of yourself, F. J. Rappal, Jr., and L. L. Rappal, your two sons?
A. Yes, sir.
Q. When did you commence business at the stock-yards?
A. January 1st, 1883.
Q. When did that firm cease to do business at the stock-yards?
A. I guess the first day of June last. We stopped in November, but carried it on in trust of L. L. Rappal.
Q. When did the firm of Rappal, Sons & Company cease doing business at the Union Stock-Yards?
A. I think it was in October.
Q. About the 8th or 9th of October, 1885, was it?
A. Somewhere along there.
Q. After that business was done in the name of L. L. Rappal, trustee?
A. Yes, sir.
Q. Until about the 11th of last June?
A. Yes, sir.
Q. Since which time the firm has been Rappal, Lamb & Company?
A. Yes, sir.
Q. What property did you have between the 1st and 9th of October, 1885, or your firm?
A. I had a couple of farms in Will county?
Q. Anything else?
A. One place a farm of 160 acres and another of 50 acres.
Q. Did you mortgage those two farms about the 9th of October, 1885?
A. Yes, sir.
Q. Was there any mortgage on them before that?
A. No, sir.
Q. They were clear at that time?
A. Yes, sir.
173 Q. Did you execute a note about the 9th of October to the Union Stock-Yards National Bank for $4,006.73?
A. Something of that kind?
Q. And another one to the Union Stock-Yard & Transit Company for about $5,800?
A. $5,000.
Q. And gave a mortgage on these two pieces of land in Will county to secure those two notes?
A. Yes, sir.
Q. Did you give any other mortgage at that time?
A. I did, sir.
Q. Who to?
A. Jacob Adler.
Q. On this land?
A. Yes, sir.

Q. For how much?
A. $7,000.
Q. Who was Jacob Adler?
A. He is a brother-in-law of mine.
Q. Where does he live?
A. In Joliet.
Q. Did you give any other mortgage about that time?
A. No, sir; not to my knowledge.
Q. Those fully covered the value of that land, didn't they?
A. There is another piece that I put in at the same time.
Q. You put into those two mortgages?
A. Yes, sir.
Q. You mortgaged all the property you had at that time?
A. Yes, sir.
Q. You mean that you had or the firm had?
A. It was my own property.
Q. Do you think of any other property?
A. No, sir.
Q. Those mortgages covered the full value of the property you mortgaged?
A. I don't know as they did.
Q. What is your opinion?
A. Depends altogether upon how you could sell them. If you had a forced sale—don't know as they would bring any more at other times, as you naturally would; they might bring more.
Q. But not much more, would they?
A. Well, I don't know about it.
Q. What was the property worth that you mortgaged—fair cash value—at the time you gave the mortgage?
A. I don't know; twenty-odd thousand dollars, I expect.
Q. And you gave mortgages for about——
A. $16,000; somewhere along there.
174 Q. Have you paid those mortgages?
A. No, sir; paid part; I guess some $1,000 paid on it.
Q. You stated to Mr. Gillespie that you didn't think that property would sell for more than $15,000?
A. I don't know as it would put it in on the market.
Q. You so stated, didn't you?
A. I couldn't say.
Q. That would be your opinion, would it, that it wouldn't sell for more than that?
A. Couldn't say, really; depends on whether you have to make a forced sale; if you did I don't know as it would.
Q. Where were you from the 1st to the 8th of October, 1885?
A. I was in Kansas City.
Q. When did you go there?
A. Along about April, I guess, or 1st of May; just along there.
Q. You remained there how long?
A. Till along in October, I think; some time along the 4th or 5th or 6th; somewhere along there.

Q. You were there when the cattle—something over 1,000 head of cattle that were in controversy—were shipped, were you?

A. I believe so.

Q. You were, were you?

A. I will tell you. I went out in the country. When I was gone W. P. Bowen & Company——

Q. I am not asking you that. I am asking you where you were. My question is, Where were you when these cattle were shipped?

A. Some were shipped while I was away and some while I was there.

Q. Now, you returned from Kansas City to Chicago about the 6th of October?

A. Somewhere along there.

Q. When did you first hear that the three drafts which you signed, payable to A. J. Gillespie & Company, Exhibits A, B, and C in this case, were protested? I mean which were drawn on you.

A. I think I heard it on Monday the first; I don't know how many.

175 Q. On Monday, the 5th of October?

A. Monday, the 5th.

Q. When did you hear that the draft for $19,505 and odd cents, dated October 1st, drawn by A. J. Gillespie & Company on your firm at the stock-yards, was protested?

A. On the 5th.

Q. Heard of it on the 5th?

A. Yes, sir.

Q. That was on Monday. Did you yourself give a draft to A. J. Gillespie & Company on your firm for that same amount, payable in 10 days from sight?

A. I was then a member of W. P. Bowen & Company——

Q. I am asking you the facts——

By Mr. BROWN: Wait a minute; he is answering your question.

Q. Answer my question——

By Mr. BROWN: I object. The witness is the complainants' own witness and he is interrupted and not allowed to explain in giving his answer. I submit that the master should compel the counsel to allow witness to answer the question, and if he doesn't answer it satisfactorily he can answer it again.

Q. I asked if he gave such a draft.

By the MASTER: I think the witness ought to answer that question, and then if he wants to make an explanation he can.

A. By being a member of W. P. Bowen & Company——

Q. I want you to answer whether you did or not.

A. I did. By being a member of W. P. Bowen & Company, and Bowen & Company owed Gillespie & Company on those cattle. I gave a draft, by being a member of the firm of Bowen & Company, on Rappal, Sons & Company. The reason I wrote Rappal, Sons &

Company—I am no hand at writing. I should have signed it Bowen & Company, but I am no hand at writing, which everybody knows.

Q. You made a 10-day draft, then, on Monday, the 5th day of October, payable in 10 days from sight, signed by yourself,
176 drawn on the firm of Rappal, Sons & Company for $19,505, did you, when you heard that draft was protested?

A. I did.

Q. And that draft was not paid?

A. No, sir.

Q. Did the proceeds of the cattle which were shipped from Kansas City on the last day of September and 1st and 2nd days of October, 1885, being something over 1,000 head, go into the Union Stock-Yards National Bank?

A. I was not here at the time.

Q. Do you know whether it did or not?

A. I suppose it did; I was not here at the time.

Q. Have you ever drawn that money out of the Union Stock-Yards National Bank?

A. I haven't, for I don't keep the books.

Q. Has it ever been drawn out, to your knowledge?

A. I couldn't say.

Q. To your knowledge?

A. I couldn't say.

Q. I am asking for your knowledge. Has that money ever been drawn out, to your own knowledge?

A. I didn't keep the books, and I don't know.

Q. Have you any knowledge of its having been drawn out?

A. I couldn't say.

Q. Can't you say whether you have any knowledge or not?

A. Because I don't keep the books; didn't know anything about the books; was not there at the time.

Q. Do you know of that money, the proceeds of those cattle, having been drawn out of that bank?

A. I couldn't say. The fact of it is I haven't kept books and I was not there, and I really couldn't say.

Q. You mean, do you, that you have no knowledge of its being drawn out?

A. I couldn't say whether they paid it out amongst them—the draft—or how they paid I couldn't say, for I never kept books or don't know anything about it.

Q. Did you see that money paid out?

177 A. As I tell you, I never kept books.

Q. Did you see the money paid out?

A. Not as I know of.

Q. And it was not paid out that you know of?

A. That is something I don't know, whether it was paid out; suppose it must have been.

Q. Do you know of its having been paid out?

A. As I tell you, I don't know.

Q. When did you first know that the draft dated September 30,

1885, drawn by A. J. Gillespie on Rappal, Sons & Company for $6,231.10 was protested?

A. On Monday, I think, the first I knew about it.

Q. The 5th of October?

A. That is my best recollection.

Q. Did you have an interview with Mr. Gillespie?

A. I did.

Q. After you heard of that going to protest?

A. Yes, sir.

Q. What did you do with him in relation to that draft at that time—make any payment on it?

A. There was a mortgage, I think, from W. P. Bowen, turned over on that $6,000, I think; that is the best of my recollection.

Q. Did you give any new draft?

A. I can't say for sure if I did or not.

Q. Didn't you give a draft for 3,200 and odd dollars on 10 days sight in part payment of that money?

A. I guess it is.

Q. That is what you gave?

A. Yes, sir.

Q. And that new draft you drew on the firm of Rappal, Sons & Company at the Union Stock-Yards, in Chicago, payable in 10 days, didn't you?

A. Yes, sir.

Q. Then you say you turned over in addition to that new draft a mortgage. What kind of a mortgage?

A. Mortgage that I got from Bowen & Company.

Q. Turned over to Gillespie?

A. Yes, sir.

Q. Was it paid—the mortgage?

A. I couldn't say.

Q. You don't know about that?

A. No, sir.

178 Q. So that you gave Gillespie a draft on that Monday, October 5th, at Kansas City, for $3,234.34, in part payment of this $6,231 draft and you turned out a mortgage of some character to him as part payment or as security for this draft, did you?

A. I believe so.

Q. You also gave him a draft on the same day at Kansas City for $19,505.62 on your own firm at the Union Stock-Yards, payable in 10 days?

(Objected to.)

Q. I mean on the firm of Rappal, Sons & Company.

A. Yes, sir.

Cross-examination by Mr. MILLER:

Q. You were a member of the firm of Rappal, Sons & Company on the 1st of October, 1885?

A. Yes, sir.

Q. At the Union Stock-Yards, in Chicago?

A. Yes, sir.

Q. With what part of the business of that firm did you have to do?

A. At that time I was in Kansas City.

Q. With what part of the business of the firm of Rappal, Sons & Company did you have to do; did you keep the books or buy?

A. I sold cattle principally when I was in the yards.

Q. Have you any knowledge whatever of the system of book-keeping?

A. No, sir; not any.

Q. What is your nationality?

A. I am German descent.

Q. Are you an educated man?

A. No, sir.

Q. Do you write readily?

A. No, sir.

Q. And have no knowledge of book-keeping at all?

A. No, sir.

Q. Were you a member of any other firm than the firm of Rappal, Sons & Company?

A. Member of W. P. Bowen & Company.

Q. Who composed that firm?

A. W. P. Bowen, Mr. James, and myself.

Q. Where was that firm doing business?

A. Kansas City.

179 Q. How long had that firm been doing business there?

A. In the neighborhood of 5 months.

Q. What was the business of that firm?

A. Buying cattle and shippers.

Q. Will you state, if you know, whether or not the firm of Bowen & Company was indebted to the firm of Rappal, Sons & Company?

By Mr. BISBEE: Objected to in that form, and it is objected to, furthermore, for the reason that it is not cross-examination. I have not asked anything about Bowen.

A. Yes, sir.

By Mr. BISBEE: Didn't you sign those two drafts that you gave in Kansas City, one for $3,234.34 and the other for $19,505.62, Rappal, Sons & Company?

A. I think they were.

Q. You think you did so sign them?

A. I think so.

Q. And you didn't mean to say before that you signed them with your individual name—your name, F. J. Rappal?

A. No, sir; don't know as I did.

Q. Isn't it your recollection that you signed, then, Rappal, Sons & Company?

A. I think so; still I am not positive.

By Mr. MILLER: Mr. Rappal, whether you signed those drafts that have been referred to by your individual name or by the name of

Rappal, Sons & Company, why did you draw those drafts on Rappal, Sons & Company, of Chicago?

A. As I have stated—as I was going to state before but they didn't give me the opportunity—W. P. Bowen & Company owed Gillespie & Company for those cattle; therefore, as a member of the firm of Bowen & Company, I drew those drafts.

Q. That is, it was to pay the debt of Bowen & Company to A. J. Gillespie & Company?

A. Yes, sir.

Q. Is that the fact, that those drafts were drawn for the purpose of paying the debt of Bowen & Company to A. J. Gillespie & Company?

180 A. Yes, sir.

Q. And not to pay any debt of Rappal, Sons & Company to A. J. Gillespie & Company?

A. That is it.

Q. You have been asked with reference to a certain draft for $6,231.10 which came back from Chicago to Kansas City on the 5th, and you said that you gave, or the firm of Bowen & Company gave, to A. J. Gillespie & Company a mortgage to pay a part of that draft.

A. Yes, sir.

Q. How large a mortgage was that?

A. I think $3,000, to the best of my recollection.

Q. State to whom that mortgage was made—to whom first?

A. To Rappal, Sons & Company.

(Objected to.)

Q. And you turned that over to A. J. Gillespie & Company? Was that to pay whose debt?

A. Bowen & Company.

Q. You said that the firm of Rappal, Sons & Company was carried on under the name of L. L. Rappal, trustee, from October, 1885, until June.

A. I believe so.

Q. Did you mean that, or that the bank account was kept in the name of L. L. Rappal, trustee?

A. That is the way it was.

Q. But the firm was carried on under the name of Rappal, Sons & Company?

A. Yes, sir.

Q. And then from the 11th of June up to the present time the firm has been what?

A. Rappal, Lamb & Company.

Q. Did you know on the 1st of October, or between the 1st of October, 1885, and the 10th of October, 1885, how the account of Bowen & Company stood with the firm of Rappal, Sons & Company, of Chicago?

A. I did not know it at the time.

Q. Had your sons advised you?

A. Not a word of it; said they were overdrawn; don't really know how much.

Q. Isn't it a fact that on the 1st of October Bowen & Company were very largely indebted to Rappal, Sons & Company?

181 A. I knew that after I came home; I found there was some $29,000 or so; I didn't know it at the time.

Q. You said on Monday, the 5th of October, you heard that certain drafts had been protested drawn on Rappal, Sons & Company?

A. Yes, sir.

Q. Do you know how that information got to Kansas City from Chicago?

A. Telegraphs, I expect.

Q. From where?

A. From the banks, I think.

Q. Do you know how many drafts were referred to?

A. I guess there were two about that time.

By Mr. BISBEE:

Q. Did you say you were engaged in some other business at the stock-yards except your live stock commission business?

A. No other, except live stock business.

Q. You are well acquainted with Mr. Conrad, the cashier, and Mr. Washburn, the president of the Union Stock-Yards National Bank?

A. Yes, sir.

By agreement of counsel the taking of further testimony in this case is adjourned to Monday, July 19th, 1886, at 12 o'clock m.

182 JULY 19TH, 1886.

F. J. RAPPAL, Jr., recalled.

By Mr. BISBEE: Have you produced the checks drawn by the firm of Rappal, Sons & Company between October 1st and October 9th, inclusive, as per request on Friday last?

A. I have; drawn on the Union Stock-Yards National Bank.

Q. You mean to say you produced all you could find?

A. Yes, sir; and you have seen what were out.

Q. Please give to the reporter the date of each check, the party it is payable to, and the amount.

October 1st.	Union Stock-Yard & Transit Company	$8,177	92
"	Transit House	17	20
"	John F. Reid	60	00
"	J. M. Laing, not paid	93	73

Q. How did you take it up?

A. Took it up under L. L. Rappal, trustee's account.

Q. Later on?

A. Yes, sir.

October 1st.	George E. Conrad, cashier	3,713	78
" 2nd.	Chicago Exchange	4,848	60
" "	Currency	20	00
" "	Fuller, Son & Company	1,145	72

October 2nd.		Currency	50 00
"	"	Keenan & Hancock	557 62
"	"	George E. Conrad	100 00
		3rd. Currency	40 00
"	"	H. L. Goodall & Company	6 24
	October 2nd.	Hess & Pfaelzer	15 66
183	October 3rd.	Frank H. Dennison	3 15
	"	" Gould & Company	5 41
October 3rd.		Postal Telegraph & Cable Company	29 18
"	"	Bunker & Cochran	343 07
"	"	Remittance	2,019 77
"	"	Exchange	727 80
"	"	Union Stock-Yard & Transit Company	5,361 34
Returned not honored in bank, Nelson Morris			25 00
October 5th.		Currency	50 00
"	"	Chicago Exchange	4,343 32
"	"	Union Stock-Yard & Transit Company	1,952 70
"	"	Currency	101 90
"	6th.	Union Stock-Yard & Transit Company	650 25
"	"	George E. Conrad, cashier	1,933 27
"	"	Yourselves	1,060 00
"	9th.	George E. Conrad, cashier	4,006 73
"	6th.	Exchange	6,385 62
"	"	Union Stock-Yard & Transit Company	922 25
"	"	Currency	88 50
"	"	W. Adams	200 00

By Mr. BISBEE: I now offer in evidence the checks produced by the witness and mark them Complainants' Exhibits 1 to 34, inclusive.

Q. State what number of those checks was paid by the Union Stock-Yards National Bank; how many of the 34 checks.

A. They were all paid but two.

Q. All paid but two, were they?

A. Yes, sir.

Q. You may state what two checks were not paid out of
184 that account by the Union Stock-Yards National Bank.

A. Exhibit 4 was not paid and Exhibit 21 was not paid.

Q. You may state from where the $8,097.61, deposited by you in the Union Stock-Yards National Bank, came.

A. Came from sales of cattle.

(Objected to as immaterial.)

A. 217 cattle and 115 hogs.

Q. Shipped by whom?

A. Shipped by Pat. Falen, J. Quigley, A. J. Gillespie & Company, account Bowen, account W. J. Stewart, J. D. Small.

Q. How much of that money arose from cattle shipped by A. J. Gillespie & Company, account Bowen?

A. $3,898.53.

Q. I show you Exhibit A, which shows $6,649.50 realized on the 2nd day of October out of 133 head of cattle. State in what item that money appears upon your pass book as having been deposited in the bank.

A. I don't know.

Q. Was it not under October 2nd?

A. I suppose it was in it.

Q. October 2nd, $6,708.84?

A. Yes, sir.

Q. It is part of it, isn't it?

A. Must be, because I don't know what those are made up of.

Q. In answer to the question that you just gave, in relation to there being $3,898.53 included in that $8,097.61, that was another shipment which was paid for?

A. That was October 1st sales.

Q. Which was paid for?

A. Yes, sir.

Q. It is not included in any of the cattle mentioned in Exhibits A, B, and C?

A. No, sir.

Q. Did the deposits appearing between October 1st and October 9th in your pass book, excepting the item of $4,006.73 and the item of 26 cents, arise from cattle shipped to your firm to be sold on commission?

185 A. To my knowledge, yes, sir.

Q. To your best information and belief, that is so, isn't it?

A. Yes, sir.

Q. And among those cattle were the cattle described in Exhibits A, B, and C?

A. I think they were, to the best of my knowledge.

Q. Who signed those checks that you have put in evidence?

A. I signed part of them.

Q. Who signed the other part?

A. I think it was my brother.

Q. L. L. Rappal, was it?

A. Yes, sir.

By Mr. BISBEE: The pass book of Rappal, Sons & Company with the Union Stock-Yards National Bank, commencing August 1st, 1885, and ending October 9th, 1885, is offered in evidence by the complainants and is marked Exhibit "R," with the understanding that defendants Rappals are to keep the book and produce it on the hearing if requested.

Cross-examination by Mr. BROWN:

Q. I see upon the back of check, Exhibit 5, memorandum in green ink. Is it in the same handwriting as the body of the check?

A. It is in the same handwriting.

Q. Whose handwriting is that?

A. That is mine.

Q. That is yours?

A. Yes, sir.
Q. And did you sign the check?
A. I did; it is on the same stub.
Q. And this placed upon the back of the check at the time the check was drawn?
A. In making our remittances——
Q. This A. J. Gillespie & Company, account Bowen & Company, was a part of the check when it was given by you to George E. Conrad, cashier?
A. I think it must have been.
Q. You said something—in direct examination—something about the present assets of the firm of Rappal, Sons & Company or
186 its members, or of the assets, rather, at the time the account ceased with the bank, somewhere between the 1st and the 10th of October, 1885, and you said that they might have had a horse, and you didn't know but they had a cow—something of that sort. I will ask you if the firm of Rappal, Sons & Company did not have debts due to them—owing to them?
A. They did.
Q. To what extent?
A. Well, there was P. Falen, some $900 or thereabouts, W. P. Bowen & Company, of Kansas City stock-yards, $29,000 and some odd dollars, and a few minor assets.
By Mr. BISBEE: Do you remember of placing on the back of check, Exhibit 5—any distinct recollection or knowledge of making that account — Bowen & Company on that check?
A. I have.
Q. When did you make it?
A. I made it at the time the check was made.
Q. Made that same day?
A. Yes, sir.
Q. Did Mr. Gillespie say anything to you about it?
A. No.
Q. He didn't know it, did he?
A. Well, it was done for——
Q. Did Mr. Gillespie know anything about it?
A. There is an explanation to be made.
Q. I want an answer to the question. Did Mr. Gillespie or any member of his firm know of your making any such endorsement on that check?
A. Don't know whether they did or not; don't think they did.
Q. They didn't to your knowledge, did they?
A. No.
Q. You spoke about debts due from Bowen & Company to you. Who composed the firm of Bowen & Company?
A. Mr. James, W. P. Bowen, and my father.
Q. And your father?
A. Yes, sir.
Q. What was your father's interest in the firm of Bowen & Company?

A. I suppose he had one-third interest; that is the best of my knowledge.

187 Q. And that firm was insolvent, was it, at the time, October 1st?

(Objected to.)

A. I don't know.

Q. Did they have any assets, to your knowledge?

A. I don't know that.

(Objected to because it assumes something that the witness has not stated.)

By agreement of counsel the taking of further testimony in this case is adjourned to Tuesday, July 20th, 1886, at 9 o'clock a. m.

188 JULY 20TH, 1886.

EDWARD MORRIS, being first duly sworn, testified on behalf of complainants as follows:

By Mr. WRIGHT: What is your name?

A. Edward Morris.

Q. What is your business?

A. I am connected with my father at the stock-yards.

Q. What is his name?

A. Nelson Morris.

Q. What is the name of the firm?

A. The business is run under 2 or 3 different firms. The firm that pays for the cattle that we buy is just run simply Nelson Morris.

Q. How long has your father been in the business?

A. I should say 30 years.

Q. At the Union Stock-Yards, Chicago?

A. Yes, sir.

Q. Have you charge of any branch of it—any department?

A. I have charge of signing of the checks.

Q. What for, purchase of cattle?

A. Well, I wouldn't know how to answer that question.

Q. Checks of all kinds?

A. Checks of all kinds.

Q. Do you know of the firm of Rappal, Sons & Company or did you know that firm when it was in existence?

A. I knew certain members of it.

Q. Do you know what their business was in October, 1885?

A. I understood it to be live stock.

Q. Can you state if your father purchased from the firm of Rappal, Sons & Company, on the 3rd of October, 1885, any cattle?

A. I suppose when you say my father you mean any of his buyers or agents.

189 Q. Purchasing for your father. You say that business, the purchasing of cattle, was run under your father's name?

A. Yes, sir.

Q. If you or any of his employees purchased for him of course it will be his purchase.

A. Our books shows it does; that is all I know.

Q. You have refreshed your memory by referring to your books?

A. Yes, sir.

Q. Have you got your books here or can you state what the purchase was on the 3rd of October, 1885?

A. No, sir.

Q. What do you know about Rappal, Sons & Company having sold your father's firm any cattle on the 3rd of October, 1885?

A. Don't know any more about it than when we buy of any other commission man, except what that gentleman, I forget his name—Mr. Gillespie—told me.

Q. Did you give Rappal, Sons & Company a scale ticket or check for any cattle purchased for your father's firm on that day, the 3rd of October, 1885?

A. If we purchased any we probably paid for them in the usual course, same as all other cattle that we purchased.

Q. What is that course?

A. Scale ticket given to the commission man.

Q. Is that your invariable custom or rule?

A. 99 times out of a hundred.

Q. For how long has that existed?

A. Before I came out there.

Q. How long is that?

A. I have been there 4 years.

Q. Have you got one of them with you—one of those scale tickets?

A. Yes, sir; I have one.

Q. Will you let me look at it, please?

A. Yes, sir.

Q. Have you made search for a scale ticket presented by the Transit Company to the firm of Rappal, Sons & Company?

A. Yes, sir.

Q. The cattle were sold to you on that day, October 3rd?

190 A. Yes, sir.

Q. Have you found that ticket?

A. No, sir.

Q. Do you know what has become of it?

A. Well, all I know about it—the tickets are no use to us, but we generally keep them any way, just for convenience sake, and have all our tickets, as a rule, but some time last fall, I think it was, Mr. Gillespie came in and asked me to show him that ticket, and, as I recollect, I got the package down and showed it to him, and I cannot find that scale ticket anywhere now.

Q. You showed him that ticket?

A. If I recollect right, I think I did.

Q. What is your recollection as to the mode you paid the commission men for the cattle—by check or by scale ticket?

A. We paid Rappal, Sons & Company by scale ticket.

Q. Do you know whether that was ever afterwards presented to you by the Union Stock-Yards National Bank?

A. I presume it was; I couldn't say.

Q. Did you make any search for a check to the cashier of the Union Stock-Yards National Bank?

A. Given on that day?

Q. On the 3rd or 5th.

A. The summons says 5th.

Q. Either the 3rd or 5th?

A. Yes, sir.

Q. Have you found that check?

A. Yes, sir.

Q. Have you got it with you?

A. Yes, sir.

Q. Will you let me look at it, please?

A. Which days?

Q. The 3rd first.

A. Yes, sir.

Q. This check is dated October 3rd, 1885. Can you tell when that was delivered to the Union Stock-Yards National Bank?

A. I couldn't say for certain; it may probably be delivered Saturday afternoon; couldn't say positively. Sometimes we
191 deliver in the afternoon and sometimes in the morning, as early as 8 o'clock; good many times in the afternoon likely.

Q. It was delivered Saturday afternoon.

A. Of course I wouldn't just remember this check; couldn't tell exactly.

Q. Can you state if the amount mentioned in that check covered the purchase by your father of the cattle from Rappal, Sons & Company of the 3rd of October?

A. Covered purchase of nearly all cattle made on that day that went to that bank.

Q. Of 353 head purchased by your father from Rappal, Sons & Company?

A. It probably took up that ticket.

Q. It took up that ticket; that is your best recollection?

A. I think that did.

Q. You take up the tickets, of course, when you give a check?

A. Yes, sir.

Q. The tickets are brought to you, are they not?

A. We send for them. If I buy cattle to-day we get scale tickets to-day, and we either give the bank a check this afternoon—generally do—or next morning early—8 o'clock. It differs just as we get around to it.

Q. You would be more anxious to take it up when you purchased on Saturday and issued a scale ticket instead of waiting over till Monday on the same day? I merely ask you as to your method of doing business.

A. I couldn't say for certain; just as the cashier would get around to it, whether he would want to balance his books that afternoon or wait till Monday morning; probably Saturday, in the afternoon.

Q. You have stated, as I understand, that this check covered the number of cattle—352 head—you purchased of Rappal, Sons & Company on that date?

A. I don't know; probably it did. To the best of my recollection, it did.

Q. You have examined your books in regard to the matter. What is your best recollection in regard to that?

192 A. It took up Rappal, Sons & Company's tickets.

Q. You say you made a search at the time Mr. Gillespie called last fall, when the matter was somewhat fresh in your mind, and you found the ticket. Have you made a search since?

A. Yes, sir.

Q. How late?

A. Yesterday and to-day.

Q. You made a thorough search of all the papers there?

A. Yes, sir.

Q. And you are unable, you say, to find this scale ticket?

A. Yes, sir; it got mislaid somewhere; I don't know where.

Q. Did you find any of October 3rd?

A. Not any one ticket; that was attached to October 5th ticket; that was not deposited till October 5th; that was on October 5th's tickets; that is the only — we found that day.

Q. That scale ticket; was that one issued to Rappal, Sons & Company—that one you found?

A. No; I don't think so.

Q. That was another firm?

A. Yes, sir; another firm.

Q. What is the other check that you have there?

A. You see your summons called for check of October 5th, so I brought the check of October 5th.

Q. Is that on the Union Stock-Yards National Bank?

A. Yes, sir.

Q. Will you please read that check, so that the reporter can take it down?

A.—

"No. 1938. CHICAGO, *October 3rd.* 1885.

The First National Bank of Chicago pay to the Order of Union Stock-Yards National Bank nineteen thousand two hundred and fifty-four dollars and forty-six cents.

NELSON MORRIS,
Per EDWARD MORRIS."

Q. You signed that check yourself?

A. Yes, sir.

193 Q. Is it endorsed?

A. Yes, sir; for deposit; I should suppose that. I couldn't read the signature, but knowing it, I would suppose it is Mr. Jameson's.

Q. Who is Mr. Jameson?

A. He is assistant cashier of the bank.

Q. Union Stock-Yards National Bank? Was that check paid by you?

A. Yes, sir; that was paid by the First National Bank and charged to our account.

Q. Went through the clearing-house?

A. No; went to the First National Bank.

Q. And was paid and charged to your account? Have you examined your books with the view of ascertaining any record of these purchases of the 3rd of October from Rappal, Sons & Company of 353 head of cattle?

A. Not particularly, except that Mr. Gillespie asked me to look.

Q. Did you show him the record of it?

A. Don't know if I did; think I did. I think he saw it. He wanted to see the scale ticket, but I couldn't find it.

Q. And you showed him the record in the book?

A. I showed him the cattle purchased that day. I think that was it.

Cross-examination by Mr. BROWN:

Q. Will you state what the scale ticket to which you refer contains, and what the scale ticket which was given *to* you to Rappal, Sons & Company, if you gave one, must have contained?

A. I should say the scale ticket signified to the correctness of the weights by the stock-yard company; and the commission firm marks the price down, and it is checked off by our account, that is sent in by our buyers, and if it is correct——

Q. How is this scale ticket headed?

A. Union Stock-Yard & Transit Company.

194 Q. Then what follows?

A. The date.

Q. Then what follows?

A. Commission man's firm—name of the party they are weighed to.

Q. Who do you mean—the party they are weighed to? In this case, supposing you bought from Rappal, Sons & Company, what names would appear upon the ticket?

A. It depends upon where we use them; some for Nelson Morris, some for Edward Morris.

Q. Suppose they are sold to Nelson Morris, what would appear upon the ticket?

A. They are all sold to Nelson Morris, but we, for convenience to us, weigh to those parties what different cattle are used for.

Q. What I want to know is what name would appear here?

A. Rappal, Sons & Company.

Q. Then first would be Union Stock-Yard & Transit Company; then the date; then Rappal, Sons & Company or whoever else they were weighed to, and then the number of cattle and the weight, and then the signature of George T. Williams, secretary of the stock-yards company, and then the certificate?

A. Then certificate.

Q. Stamped upon it by him if it is a correct duplicate. What becomes of the ticket of which this a duplicate?

A. I suppose the company takes them or the commission firm; I don't know.

Q. Then this certificate is given to the commission firm?
A. Commission firm.
Q. Then, in the ordinary course of business, the commission firm would deposit that ticket in the bank, with its name upon the back?
A. Yes, sir.
Q. Therefore, in this particular case, if you gave—if Nelson Morris gave—a sales ticket to Rappal, Sons & Company upon October 3rd, 1885, it would be Union Stock-Yard & Transit Company, October 3rd, 1885; Rappal, Sons & Company to Nelson Morris; so many cattle sold, the weight, such a price?
195
A. Such a price.
Q. Then the signature of the secretary of the company and the stamp upon it, showing it is a correct duplicate?
A. Yes, sir.
Q. That would have been given to Rappal, Sons & Company; Rappal, Sons & Company would put what upon the back of it?
A. Rappal, Sons & Company would bring it to our office—they would fill it out with the correct price on; this is the way they get it to the stock-yards; just like this.
Q. Then what would you do with it?
A. We have record of it sent in by the buyers, and we check it over; and, if the price and weight are correct—we do that so there is no mistake—then we would mark on it, This ticket must be properly endorsed before being deposited.
Q. Then what else?
A. Pay whatever amount of money it was and sign Nelson Morris, per somebody in the office.
Q. After the ticket was given to the commission house with that upon its face which you have indicated, they would bring it to your office and have it checked up?
A. Yes, sir.
Q. You then stamped upon it, This ticket must be properly endorsed before being deposited?
A. Yes, sir.
Q. And, underneath that, Pay the amount called for?
A. Yes, sir.
Q. Nelson Morris?
A. Yes, sir.
Q. That would give the facts?
A. Yes, sir.
Q. Then would they, in the ordinary course of business, deposit in their bank, and the bank would then hold it as a claim against you and collect it?
A. Yes, sir.
Q. Would there be anything upon this ticket by which you or the bank or any other person could tell for whom the commission house was selling those cattle?
196
A. No, sir.

Redirect examination:

Q. Yesterday did you see Mr. Conrad, the cashier of the Union Stock-Yards National Bank, in regard to this matter when you were asked to produce the ticket?

A. Yesterday Mr. Gillespie came into the office and I believe asked me to give him the tickets, and I told him if he would come in an hour I would look it up and try and find it; and I told him I wanted to see my father; if my father said all right I would look it up and try and find it. I couldn't find my father, and Mr. Gillespie came back again in the course of half an hour or three-quarters, and I told him I wanted to see Mr. Conrad and see if there was any objection; I believe I mentioned the name; I don't say for certain if I did show him the ticket.

Q. What did Mr. Conrad say?

A. I asked Mr. Conrad, and he said no; there was no objection.

Q. Then did you hunt for the ticket after that?

A. Yes, sir; hunted very thoroughly?

Q. And couldn't find it?

A. No; the ticket must have been mislaid when I gave it to Mr. Gillespie last fall.

Q. When did you give it to him?

A. Well, when I showed it to him; I don't know what has become of it since.

Q. He didn't take it with him?

A. I shouldn't say so.

By agreement of counsel the taking of further testimony in this case is adjourned to Wednesday, July 21st, 1886, at 9 o'clock a. m.

197 *Testimony on Behalf of Defendant.*

NOVEMBER 30TH, 1886.

Counsel present as before.

JAMES R. CALDWELL, being first duly sworn, testified on behalf of defendant as follows:

By Mr. BROWN: What is your full name?

A. James R. Caldwell.

Q. What is your business?

A. Collection teller in the Union Stock-Yards National Bank.

Q. How long have you been so?

A. Little over a year.

Q. How much over a year; can you give it exactly?

A. Yes; I think I can; I think it was about the last of June or first of July that I was appointed collection teller.

Q. Of what year?

A. Of 1885.

Q. Then you were in your present position during the time from September 30th, 1885, to October 10th, 1885?

A. Yes, sir.

Q. What are your duties and what were your duties at that time

as such collection teller with reference to drafts sent to your bank for presentation and collection upon commission men at the stock-yards?

A. My duties were to receive all drafts, enter the same for collection, collect them, and remit the proceeds as directed.

Q. What were your duties, if any, with relation to the advice of the payment or non-payment of such drafts?

A. Well, some drafts are to be advised by the telephone, on non-payment; some are to be advised, whether paid or not, by telegraph, and others to be advised only of non-payment.

Q. And I asked you, with reference to your individual duties, what part do you take in such advice generally.

198 A. I generally notify the banks which we receive these collections from.

Q. Suppose they are to be notified by telegraph, do you send the telegram?

A. Yes, sir; I write the telegram and send it.

Q. What do you do with the telegram after you write it?

A. I take it to the cashier for signature.

Q. Do you remember the reception by the Union Stock-Yards National Bank, for collection, of a draft from the Kansas City Stock-Yards Bank—A. J. Gillespie & Company upon Rappal, Sons & Company—of $6,231.21, being a draft which has been introduced in evidence in this cause and marked Exhibit D, which I now show to you?

A. I recollect a draft of that sort upon Rappal, Sons & Company, but I don't recollect the name——

Q. You don't recollect the name of the drawer?

A. No, sir; I never keep a record of that; keep a record of the bank I receive it from and the firm it is drawn on.

Q. When was the draft which you hold in your hands, if you know, received by the Union Stock-Yards National Bank?

A. October 2nd, 1885.

Q. Have you in your custody and under your control the books of the bank which show the memoranda made at the time of the reception of this draft?

A. Yes, sir.

Q. Have you it with you?

A. I have.

Q. Will you please look at the book and read what it may say?

A. October 2nd, 1885, Kansas City letter on collection on Rappal, $6,231.10.

Q. What does that entry show, independently of your recollection?

A. The entry shows that I received the draft for collection.

Q. On what day?

A. On October 2nd.

199 Q. What was done with that draft; did you present it in the course of your duties?

A. I presented it as I present all other drafts that come to me in

the bank; I make an entry of them and have a man take the drafts through the building; that draft was presented in that course.

Q. Was it paid?

A. It was not.

Q. After sending that draft out when did you next see it and how?

A. I next saw the draft a short time before the bank closed.

Q. On what day?

A. On the same day, October 2nd, before 3 o'clock.

Q. How did you see it?

A. It was brought back to me either by one of the Rappals or their book-keeper—I have been trying to think; I can't recollect now which one brought it back.

Q. Then is it usual for drafts to be left sometimes with the persons upon whom they are drawn?

A. It is our custom to leave all drafts with the commission firms.

Q. Then they are so left without payment at first?

A. Without payment at first.

Q. For what reason?

A. For the reason that at the time we send the drafts out is the time that commission men are principally at dinner, and don't get back to their office much before 1 o'clock, and the book-keepers in the meantime have time to look up the drafts, draw a check, and get them to sign it; if correct, get their consent—in other words, whether to pay certain drafts.

Q. Under what arrangement are such drafts left? They become the property of the commission men until they are paid, or are they left in trust for them?

A. They are not the property of the commission men until they are paid, and they so understand it.

200 Q. You say the next day this draft was brought back by one of the Rappals or their book-keeper?

A. I am not positive, but the draft came back with the remarks, We will pay this in the morning.

Q. Who made that remark?

A. The person who brought it; we will pay that draft in the morning.

Q. What did you then say, if anything?

A. Made no remarks at all; just took and cut it out of my letter.

Q. What do you mean by cutting it out of your letter?

A. When I receive my mail I write a letter as to these drafts we are going to pay. I have every letter written by the time the drafts go out. The letters are written as though they were going to be paid and remitted to the different banks.

Q. You did write a letter advising the bank from whom you received this draft?

A. Yes, sir. This letter was written to P. Connelly, assistant cashier Kansas City Stock-Yards Bank.

Q. Have you the letter?

A. I have a press copy of the letter.

Q. Will you please turn to it?

A. This is the letter.
Q. Just read that letter.
A.—

10, 2, '85.

P. Connelly, assistant cashier, Kansas City:

Your favor of the 30th is received, with enclosures, as stated. I remit the American exchange, New York, for your credit, two items, as specified *as* below:

On us		$149	
Darlington		1,000	
Fowler		1,037	48
	Adams & Burk	7,275	01
201	Paxon, Shattuck & Co.	400	00
	Keenan & Hancock	1,000	
Rappal		6,231	10

I drew my pen through Rappal's draft for $6,231.10, and deducted it from the letter, which was $17,092.59, leaving a balance of $10,861.49.

Q. When was that letter sent?
A. On the evening of the 10th month, second.
Q. On the evening of October 2nd, 1885?
A. Yes, sir.
Q. What did you do with the draft?
A. I put it on the notary's desk.
Q. Who was the notary?
A. Charles Jamieson.
Q. For what purpose?
A. To protest.
Q. Did you say anything about this draft to any other person?
A. No, sir.
Q. Did you report it to the officers of the bank in any other way than that stated?
A. Not on October 2nd I didn't.
Q. Did you send any advice of the non-payment of this draft to the Kansas City Stock-Yards Bank otherwise than by this letter, if that was such an advice?
A. No, sir; not on October 2nd.
Q. Did you telegraph to the Kansas City Stock-Yards Bank?
A. I did not.
Q. Were you in the habit of so doing?
A. Yes, sir.
Q. It had been your custom, you say, to telegraph the non-payment of drafts sent by the Kansas City Stock-Yarks Bank?
A. Yes, sir.
Q. Why didn't you do it in this case?
A. Forgot it.
Q. You forgot it?
A. Yes, sir.
Q. Did you receive any directions from any person not to telegraph such draft?

A. No, sir.

202 Q. Did you have any intimation that you were not expected to send such telegram?

A. No, sir; I knew it was my duty to do it.

Q. From any officer of the bank, I mean.

A. No, sir.

Q. What next happened about that draft?

A. Next morning I was told by one of the Rappals or their book-keeper—I can't say which now—that they couldn't pay that draft.

Q. You mean Saturday, October 3rd?

A. Saturday, October 3rd.

Q. You were told by one of the Rappals or their book-keeper that they couldn't pay that draft?

A. Yes, sir.

Q. What else was said at that conversation, if anything?

A. The matter was then brought to the notice of Mr. Conrad, the cashier. He asked me if I had telegraphed it. I told him no. He said, Haven't you got standing orders to telegraph? Yes; I have. Why didn't you do it? I told him I had forgotten it; and he then telegraphed, I think, to the—telegraphed the draft. I told him I had cut it out of the letter, and——

Q. I will ask you whether it is customary or not for drafts to be presented and refused, protested, and held and frequently paid the next day or some time thereafter.

A. Yes, sir; quite frequently.

Q. What further did Mr. Conrad say to you; do you know? Was the conversation with you in the nature of a reproof to you, or anything of that sort?

A. I took it as such. He told me I ought to have telegraphed according to my instructions, when I had standing instructions to that effect. I knew that, and why I didn't do it I can't say, other than I was very busy and it slipped my mind; the only way I can account for that.

Q. Did you neglect to do it from a desire to conceal anything from the Kansas City Stock-Yards Bank?

A. No, sir.

Q. What next happened to the draft, as far as you know?

203 A. I wrote a letter returning that draft to the Kansas City Stock-Yards Bank, notifying them of its protest, asking them to remit us the protest fees.

Q. Will you please turn to the letter, if you have a press copy of it?

A. Yes, sir.

Q. Will you please read the letter?

A. 10, 3, 85.—P. Connelly, assistant cashier, Kansas City.

Q. Will you please read what you find in your press copy letter book, stating whether it is the whole or a part of the letter which you sent?

A. The press copy, as I am about to read it now, is my letter to the Kansas City Bank, outside of the printed matter:

P. Connelly, assistant cashier, Kansas City; Charles Jamieson, assistant cashier, Kansas City:

Rappal	$6,231 10
Protest fees	2 31
Total	$6,233 41

Please remit fees.

Q. Upon what sort of a blank, if that letter was written upon a blank, was that sent?

A. Written on a blank that we have for returns.

Q. Can you state the substance of what is said in the printed part of the letter? The effect of that letter was to say that it enclosed this $6,231.10 draft, was it not?

A. It enclosed that identical draft.

Q. And, as a matter of fact, you did send that draft back in that letter?

A. In that letter; yes, sir.

Q. When did that letter go?

A. That letter was sent tenth month, third, 1885.

Q. By tenth month you mean October?

A. October 3rd, 1885.

Q. When did that letter go; what time in the day?

A. It left the bank probably 5 o'clock in the evening.

204 Q. I will ask you, as to all your letters to the Kansas City Bank, what time of the day upon which they are dated do they leave the bank?

A. They leave the bank probably about 5 o'clock; I can't say just exactly what time. The mail man comes in about 5; comes in again about half past 5. If the mail is ready he takes it. If we are ready with our mail at 5 he will take it.

Q. Do you ever send any letters in the morning—before noon?

A. I never do; can't send any in the morning or any at noon for the simple reason that I don't get my stuff out until noon; couldn't say whether it was paid or not until—other than the protest notices that go down town.

Q. What do you mean by down town?

A. To Chicago.

Q. I will show you a draft, marked Exhibit E, which has been introduced in evidence here, and ask you if you ever saw such a draft before.

A. Yes, sir.

Q. When did you first see it?

A. October 5th, 1885.

Q. That was Monday, I believe?

A. Yes, sir.

Q. How did you receive it, if you did receive it?

A. I received it by mail.

Q. From whom?

A. From the assistant cashier of our bank.
Q. Of what bank?
A. Of our bank.
Q. You mean you received all the mail—handed to you?
A. Yes, sir.
Q. Does he open it?
A. He opens the mail.
Q. And hands it to you?
A. And hands it to me.
Q. In a letter from whom was that draft enclosed?
A. Letter from P. Connelly, assistant cashier of the Kansas City Bank.
Q. Have you the book which shows a memorandum of the reception?
A. Yes, sir.
Q. Will you please turn to the memorandum which that book contains, if any, and state what it shows? In what book is this?
205 A. Book of Collection Number 2.
Q. What is the entry?
A. The entry is Kansas City. The letter accompanies a great number of drafts; among them is Rappal, Sons & Company, $19,505.62.
Q. Under what date is that entered?
A. October 5th, 1885.
Q. And in what comparative order of the entries on that day?
A. In the regular order of the morning mail.
Q. And there are several items before it?
A. Yes, sir; several items before it.
Q. And several after?
A. Several after.
Q. What did you do with this draft upon receiving it?
A. Presented it to Rappal, Sons & Company for payment.
Q. When?
A. October 5th, 1885.
Q. Personally?
A. No, sir.
Q. By whom?
A. It must have been presented by the man that takes our drafts. As a general thing, I present no drafts.
Q. Did you send it out in the regular course of your business?
A. Yes, sir.
Q. When did you next see it?
A. I saw the draft the next day.
Q. Who gave it to you?
A. Given to me by the assistant cashier to return protested.
Q. The next day was October 6th?
A. The next day was October 6th.
Q. What did you then do concerning the draft?
A. Returned it to the Kansas City Bank, with the request that they remit protest fees.

Q. Did you upon Monday advise the bank of the non-payment of that draft?
A. I did not.
Q. Do you know whether it was done?
A. Yes, sir; it was done.
Q. By whom?
A. Done by the cashier of the bank.
206 Q. From anything within your personal knowledge?
A. Other than seeing the dispatch copied?
Q. Did you write the dispatch?
A. I did not.
Q. But you saw it copied?
A. Yes, sir.
Q. Then you knew upon Monday that it was not paid?
A. Yes, sir.
Q. What time?
A. Not before 3 o'clock.
Q. Some time in the afternoon of Monday?
A. Yes, sir.
Q. And had you written a letter according to the custom which you have stated here, concerning that item, upon Monday?
A. Yes, sir.
Q. Have you a copy of it?
A. I have.
Q. Will you read from your letter book, in the form that you have, of the letter which you refer to, dated October 5th?
A.—

CHICAGO, *October 5th.*

P. Connelly, assistant cashier, Kansas City, Mo.:

Your favor of the tenth month, second, is received, with enclosures as stated. I remit the American Exchange National Bank, New York, the following:

Commercial, Chicago	$30,000
Fowler	2,217 34
Swift & Co.	4,512 89
Swift & Co.	12,418 59
McFarland	607 37
Rappal	19,505 62
Stafford	2,500
Horine	50 00
McIlheny	1,001
Keenan & Hancock	13,617 14
Armour, for collection	50 00
Us	1,000

207 Q. Through the item Rappal, Sons & Company is there a pen drawn?
A. Through the item of Rappal, Sons & Company I drew my pen, $19,505.62, and deducted the same from the total. That letter was to be remitted, part to the Commercial National Bank of Chicago,

part to the American Exchange National Bank of New York; $17,550 went to the Commercial of Chicago, $507—some amount I can't recollect—went to the American Exchange; the difference, however, went to the American Exchange, New York.

Q. Did you return the draft afterwards, and when?

A. Yes, sir; on the 6th of October, 1885.

Q. By letter?

A. By letter.

Q. To whom?

A. To P. Connelly, assistant cashier, Kansas City, Mo.

Q. And went when from the bank?

A. Went from our bank tenth month, sixth—October 6th.

Q. Have you a copy of that letter?

A. I have.

Q. In the letter book?

A. Yes, sir.

Q. Will you turn to it, please, and state what it shows?

A. Letter shows, according to letter book, tenth month, sixth, P. Connelly, assistant cashier, Kansas City; printed matter not copied. The part that I have written is—

Rappal	$19,505 62
Fees	2 31
Total	$19,507 93
Rappal	691 70
Fees	2 31
Total	$694 01

Please remit fees.

Q. Did that letter enclose this draft, Exhibit E?

A. Yes, sir.

Q. I will show you a draft, marked Exhibit F, offered in evidence in this cause, for $691.70, and ask you if you ever saw that draft before.

208 A. Yes, sir.

Q. When?

A. On the 5th of October.

Q. What year?

A. 1885.

Q. How did you receive that draft?

A. By mail.

Q. Did you receive it by the same mail as the $19,000 draft?

A. No, sir.

Q. I mean by the same mail. Did you receive it at the same time—not necessarily the same letter?

A. No; I think not, if my memory serves me right. I think I received that in a later mail—a mail that we get about 11 o'clock.

Q. Have you a memorandum in your collection register which shows the receipt of that draft?

A. I have.
Q. Will you please turn to it, and what does it contain?
A. Kansas City, Rappal, $691.70.
Q. Under what date is that entry?
A. October 5th, 1885.
Q. Before or after the $19,000 draft?
A. After.
Q. Are there many items between?
A. Yes, sir.
Q. What did you do with that draft?
A. The draft was presented in the regular way.
Q. When did you next see it?
A. I next saw the draft about 3 o'clock.
Q. That day?
A. Yes, sir.
Q. Who showed it to you?
A. That I can't say, who showed me the draft.
Q. Did you see that draft before you saw the other one, the $19,000 one?
A. That I can't say.
Q. I think you stated that you saw the——
A. Well, I saw that $19,000 draft first, because it came in first. This I didn't see——
Q. You mean after it had been presented.
A. Well, that I can't say.
209 Q. Then you don't know whether you saw either of these that day again?
A. No, sir; I can't say that I saw either of those two drafts; those two drafts I didn't see until the 6th.
Q. Who showed it to you, or how did you come to see it?
A. Handed to me by the assistant cashier.
Q. For what purpose?
A. For the purpose of writing a letter and returning it as protested.
Q. Have you a copy of any letters referring to that draft?
A. Yes, sir.
Q. Will you turn to the first one which contains any reference to it, if you please? Is it included in the letter of October 5th?
A. No, sir.
Q. Will you please state, then, whether there was any letter written by you upon October 5th in which this item of $691 and some odd cents appears and from which it was afterwards cut out?
A. Yes, sir.
Q. Will you turn to that letter and read the contents of it?
A.—

"CHICAGO, *Oct. 5th*, 1885.

P. Connelly, assistant cashier, Kansas City, Mo.:

Your favor of the 3rd is received, with enclosures, as stated. I send the American Exchange National Bank of New York, for your credit, items as specified below:

Rappal	$691 70
Paxon, Shattuck & Co.	450 00
M. Fort	2,001 87
Total	$3,043 57"

Q. What, if anything, is the condition of the Rappal item?
A. The Rappal item has my pen drawn through, and the amount, $691.70, deducted from the total.
Q. When did that letter go?
A. That letter went on October 5th.
Q. What time?
A. Went at the usual time.
210 Q. In the afternoon?
A. Yes, sir.
Q. Somewhere near 5 o'clock?
A. Yes, sir; round about that time.
Q. When did you return the draft, if at all?
A. I returned that draft October 6th, 1885.
Q. And have you the letter in which you returned it?
A. Yes, sir.
Q. Will you turn to it?
A. Yes, sir.
Q. You have already read this letter, have you not?
A. I have.
Q. It is the letter in which you returned the $19,505.62 draft?
A. Yes, sir.
Q. And that letter went when?
A. On October 6th, 1885.
Q. In the afternoon?
A. Yes, sir.
Q. Was there anything, so far as you know, in the receipt, presentation, protest, advice, or return of these drafts different from or unusual in relation to the reception and collection of such drafts?
A. No, sir.
Q. The failure which you speak of to telegraph the non-payment of the draft which was received upon October 2nd you have explained; was everything else in the matter of these drafts at all different from your usual course of business?
A. Nothing at all.
Q. Did you receive any specific or personal order concerning these drafts different from those you usually receive concerning drafts?
A. I did not.
Q. From the officers of the bank?
A. No, sir.
Q. Or any information from them that they were to be treated in any way differently from any other drafts received in the bank for collection?
A. The officers of the bank didn't know I had them.
Q. So far as you know?

A. I know they didn't, because the officers of the bank are
211 not there when I get my mail, with the exception of the assistant cashier.

Q. You mean upon the date when the drafts are received?

A. Yes, sir; upon the receipt of those drafts, and after I had used all my powers to collect the same.

Cross-examination by Mr. BISBEE:

Q. You said the draft, marked Exhibit D, for $6,231.10—that you left it in the office of Rappal, Sons & Company on the 2nd day of October, 1885, and that it was returned to you by either one of the Rappals or their book-keeper before three o'clock of that day. Did you also leave the draft, marked Exhibit E, for collection for $19,505.62 in their office the same way?

A. No, sir.

Q. What did you do?

A. Mr. Conrad took that draft.

Q. You mean by Mr. Conrad the cashier of the bank?

A. Yes, sir.

Q. Explain just what you mean when you say Mr. Conrad took it; in your own way.

A. Mr. Conrad got that draft from me, and whatever information he had he telegraphed it himself, as I didn't——

Q. When did Mr. Conrad get this large draft for $19,505.62 from you?

A. Got it from me the day it was received—October 5th.

Q. That was Monday morning, wasn't it?

A. Yes, sir.

Q. What time Monday morning did Mr. Conrad take that draft from you?

A. Well, I can't say exactly what time it was in the morning. It was between 8 o'clock and 11.

Q. In the forenoon?

A. Yes, sir.

Q. Then you didn't present or cause this last draft of $19,505.62 to be presented in the same way and same manner as you did the one on the Friday before that?

212 A. Mr. Conrad took the draft to present himself; therefore I couldn't present it.

Q. Why did Mr. Conrad take it from you to present himself?

A. That I don't know.

Q. You don't know?

A. No, sir.

Q. Wasn't that a little out of the ordinary course of presenting drafts?

A. A little out of the ordinary way; yes, sir.

Q. That is, it is not common for Mr. Conrad to take a draft from you to present himself?

A. No, sir.

Q. The usual course of business is to present the draft when it is handed to you by the assistant cashier—that is, when the mail is

handed to you by the assistant cashier the mail contains a draft, don't it?

A. Yes, sir.

Q. And then you send a young man by the name of White to the office of the commission merchant upon whom the draft is drawn and leave it at his office, don't you?

A. Yes, sir.

Q. The regular course is for that commission merchant after dinner to bring into the bank a check to pay that draft, isn't it?

A. Usual for them to bring in the check with the draft pinned to it.

Q. Then, when that draft is brought in, you take the draft and stamp it paid, don't you?

A. Not until I know the check is good.

Q. You do when you know the check is good?

A. And when it is paid then I stamp those I held over at night and send them out the next day when the drafts are presented again.

Q. How would you return the drafts to the commission men?

A. I returned them the next day, at the same time the new drafts are presented that day.

Q. You return the drafts that are paid the day before, with new drafts that come in on the commission merchants?

A. Yes, sir.

Q. And that is exactly what you did with the draft for $6,231.10, with the exception that it was not paid—that is, you sent it out by the boy?

213 A. Yes, sir.

Q. Left it in Rappals' office?

A. Yes, sir.

Q. And it was returned to you on Friday afternoon, October 2nd, with directions that it would not be paid?

A. Would be paid next morning.

Q. Do you know who brought that draft in to you?

A. I do not.

Q. Have you any recollection whether it was brought in by one of the Rappals or their book-keeper?

A. I have been trying to think; to get that matter clear in my mind. I won't say under oath which one brought it in; but the draft——

Q. Give your best impression.

A. My best impression was that Fred. J. Rappal brought it in.

Q. Fred. J. Rappal, Jr.?

A. Yes, sir; that is my impression. I may be wrong.

Q. Now, then, have you any distinct recollection of taking the draft for $19,505.62 out of the mail? Do you recollect it, as an independent fact?

A. No, sir. I didn't open the mail.

Q. The mail is opened by the assistant cashier and handed to you, isn't it?

A. Yes, sir.

Q. Is the letter handed to you the letter which accompanies the draft?

A. Yes, sir.

Q. Now, have you any distinct recollection of taking that draft out of the envelope or taking it and having the letter in your hand which accompanied it?

A. I have a distinct recollection of having that letter and that draft.

Q. You do have?

A. Yes, sir.

Q. Independent of any papers that are before you, or any communication?

A. Well, I have this recollection: I made a record of it in my writing. I have made a record of that in my book, together with other drafts that came in that letter, with a large number of
214 drafts—probably 60 or 70 thousand dollars' worth of drafts.

Q. But you recollect that draft?

A. Of receiving that letter and making a record of it.

Q. What time in the morning?

A. In the early morning mail.

Q. How early did you receive it?

A. Probably 9 o'clock; when I got there.

Q. It was on your desk?

A. No, sir; on the assistant cashier's desk.

A. And it was brought to you from his desk?

A. No, sir.

Q. How did it get on yours?

A. I went there and took it.

Q. Off the assistant cashier's desk?

A. Yes, sir; as is my custom.

Q. Do you know whether that letter arrived at the bank on Saturday afternoon or Monday morning that contained the $19,505.62 draft?

A. No; I got all my letters Saturday—any time—made a record of them.

Q. How late does mail come in the bank afternoons?

A. 3 o'clock.

Q. What time do you close your bank on Saturday?

A. 1 o'clock.

Q. Now, then, if a letter was delivered at 3 o'clock Saturday afternoon you would get it Monday morning?

A. Won't find anybody there to deliver it to.

Q. Wouldn't the mail be left there?

A. Probably.

Q. In the bank?

A. Yes; if they could get in.

Q. And remain there till Monday morning?

A. I suppose so.

Q. That is the fact about it, isn't it?

A. I suppose so if it got in there.

Q. When you received this draft for $19,000 and odd—
215 when it came to your hands Mr. Conrad came to your desk and took it, did he?

A. If my recollection serves me right that letter was written in Kansas City.

Q. That is not answering my question; I am asking you this: When you received this draft for $19,000, Monday morning, Mr. Conrad came to your desk and took it, didn't he?

A. Mr. Conrad came down and asked me for the draft and I handed it to him.

Q. That is what took place?

A. Yes, sir.

Q. When did you next see that 19 thousand and odd dollars draft?

A. I saw it next day when it was protested—that is, when it was handed to me along with other drafts, protested matter, to return.

Q. You saw it on Tuesday?

A. Yes, sir.

Q. What time in the day Tuesday?

A. Early in the morning; I get my protested matter first thing in the morning.

Q. You recollect, don't you, that that 19 thousand and odd dollars draft was handed to you Tuesday morning?

A. Yes, sir; because I wrote my letter——

Q. Who handed it to you?

A. Assistant cashier.

Q. What did he say to you about it?

A. To go back.

Q. That is, the draft was to go back?

A. I understood from that it was to go back; it was protested; I must write my letter, put in protest fees, and ask for remittance.

Q. That is all he said?

A. Yes, sir.

Q. Did Mr. Conrad say anything?

A. No, sir.

Q. Didn't talk to you about it afterwards?

A. No, sir.

Q. He never spoke to you about it?

A. No, sir.

Q. With reference to the draft for $691.70, you say that was received in a later mail on Monday, October 5th, 1885?

216 A. That was received at 11 o'clock.

Q. 11 o'clock mail?

A. Yes, sir.

Q. And what did you do with it when it came to your desk?

A. Well, my recollection now is that it was sent out in the regular way.

Q. Sent out by whom?

A. If it was sent out in the regular way, by Mr. White, the young man that takes my drafts.

Q. And left in the office of Rappal, Sons & Company?

A. Left in the office of Rappal, Sons & Company.

Q. That is your recollection?
A. Yes, sir.
Q. Is your recollection distinct on that point?
A. No.
Q. Indistinct, is it?
A. As far as that one particular draft is concerned, because I had never looked the matter up since and can't recollect that one particular of it, and it must have gone out in the regular way.
Q. You don't recollect it particularly?
A. Not particularly; no.
Q. Are you positive that Mr. Conrad didn't also take charge of this draft as well?
A. No, sir; I am not.
Q. He may have taken charge of this one?
A. No; I can't say as to that.
Q. How many pages are there in your collection register of drafts under date of October 5th?
A. What we call 5 pages—4 probably and three-quarters.
Q. And the draft for $19,505.62 appears on the first page of those five pages, don't it?
A. Yes, sir.
Q. Now, then, isn't it true that the drafts, if any there were, delivered in the afternoon mail of Saturday, October 3rd—put in the bank in the afternoon mail of Saturday—appear on your collection register under date of October 5th?
A. Most assuredly.
Q. That is true, isn't it?
A. Of course.
217 Q. So that under date of October 5th the register shows all the drafts that came into the bank by mail Saturday afternoon and all day Monday, don't it?
A. No; it don't.
Q. What does it show?
A. My register shows that if any mail was left over and came in at that mail—my register shows here that everything was entered up October 3rd.
Q. Then tell me whereabouts in your collection register the drafts which came in the bank at 3 o'clock Saturday afternoon appear?
A. How do I know there were any that came?
Q. If there were any.
A. Of course it would come in on the 5th.
Q. Appear on your collection register under date of October 5th?
A. Of course, if there were any; yes, sir.
Q. Then it is true that your collection register, under date of October 5th, shows all drafts that came to the bank in the afternoon mail of Saturday, if any, and all day Monday?
A. Yes, sir—no; not all day Monday.
Q. What portion of the day?
A. If a draft came Monday at 3 o'clock, of course I wouldn't have that draft in on Monday.
Q. It would appear on the collection register of the next morning?

A. Yes, sir; couldn't collect that day, as all commission men would be away.

Q. You have stated that your duties in the bank are to collect drafts and remit proceeds as directed?

A. Yes, sir.

Q. Who gives you those directions?

A. The banks that I receive the drafts from.

Q. You get your directions from the letters that accompany the drafts?

A. Yes, sir.

Q. Do you ever get any directions from the cashier of your bank?

218 A. I get no directions at all from the cashier of our bank, because he don't know what collections I get.

Q. You don't know, as a matter of fact, do you, what action Mr. Conrad did take with reference to that $19,000 draft after he took it?

A. No, sir.

Q. You have no knowledge whatever as to what course he took with that draft?

A. No, sir.

Q. When you received the draft of $6,231.10 and ascertained that it was not paid, didn't you write out a telegram, and leave it on the cashier's desk, in relation to the non-payment of it?

A. I don't think I did.

Q. Do you know whether you did or not?

A. I know I didn't.

Q. You know you didn't?

A. Yes, sir; it was taken out of my hands by Mr. Conrad after he asked me if I didn't have standing orders to telegraph the Kansas City bank; if that was not one of our banks that we were to telegraph. I told him yes. He wanted to know why I didn't do it, and I told him I had forgotten it, and he seemed to censure me for not doing it; but it was just simply overlooked on my part. I generally do it, and don't know why I didn't in that particular case; couldn't account for it.

Q. Did you know, at the time of this draft's going to your bank, that Rappal, Sons & Company were owing your bank a large amount of money?

A. No, sir. I had not talked——

Q. Knew nothing about it?

A. No, sir.

Q. That is not in the line of your duty?

A. Not in the line of my duty at all.

Q. Your duty consists strictly, does it, in making collections and paying them?

A. Yes, sir.

Q. And you keep the collection register yourself?

A. Keep the collection register, and it is before me.

219 Redirect examination:

Q. As I understand you, you are unable to fix the time at which Mr. Conrad got that draft from you—that $19,000 draft upon October 5th—any nearer than between 8 o'clock and 11 o'clock?

A. Yes, sir.

Q. It might have been as late as 11 o'clock?

A. Yes, sir; it might have been.

Q. Any later?

A. Might have been later, because my drafts don't leave my desk until after 12, and I can't tell——

Q. All you mean to say is that Mr. Conrad, some time before the drafts left your desk, came and took that draft?

A. Yes, sir.

Q. Did he look over the drafts to see if there were any drafts against Rappal, Sons & Company?

A. No, sir; he asked me, I think, for it; I am not sure which; I am not certain about it.

Q. Don't know what he did?

A. No.

Q. But some time before the drafts left your desk he got that draft?

A. Yes, sir.

Q. And you don't know that he got this $691 draft at the same time?

A. I don't know that he got that at the same time.

Q. If he didn't get it, it was probably because it was not there?

A. No, sir.

Q. You don't know but that he took both those drafts?

A. No, sir; I had both drafts at that time, as my records show.

By stipulation of counsel, signatures of all witnesses on both sides waived.

220 It is stipulated that all objections to the relevancy, materiality, or competency of any testimony taken in this cause at this session or at any time, in Kansas City, to be used in this cause, may be made upon the trial of the case the same as if specific objections had been made before the question was answered.

Depositions of witnesses produced, sworn, and examined at the office of Warner, Dean & Hagerman, in the city of Kansas, in the county of Jackson and State of Missouri, before me, the undersigned, Edward W. Taylor, notary public within and for said county and State, in a certain cause now pending in the city of Chicago, county of Cook and State of Illinois, between A. J. Gillespie and others against the Union Stock-Yards National Bank and others, on the part of the plaintiffs.

T. E. Gillespie, Peter Connelly, A. J. Gillespie, John J. Gillespie, and Milton James, of lawful age, being sworn and examined on the part of the plaintiffs, depose and say:

Deposition of T. E. Gillespie.

Examination by Mr. BISBEE:

Q. State you full name.
A. Thomas E. Gillespie.
Q. Where do you reside?
A. In Kansas City, Missouri.
221 Q. How long have you resided there?
A. Fifteen years.
Q. Of what firm, if any, are you a member?
A. A. J. Gillespie & Co.
Q. What is the business of said firm?
A. Live stock commission business.
Q. Where?
A. Kansas City stock-yards.
Q. How long have said firm been in business in Kansas City?
A. Six or eight years.
Q. Who composed said firm during the entire year of 1885?
A. My father, my brother, and myself.
Q. Give the names.
A. A. J. Gillespie, Louis Gillespie, and Thomas E. Gillespie.
Q. Is the same firm now in existence—the same partners?
A. Yes, sir.
Q. Examine Exhibit D, which is now shown you, and state if you ever saw that instrument before and when you first saw it.
A. Yes, sir.
Q. Who drew that draft?
A. I did.
Q. When did you draw it?
A. On the 30th of September, 1885.
Q. Why did you draw that draft on Rappal, Sons & Co.?
A. For a bunch of cattle.
Q. How many cattle?
222 A. 133.
Q. 133 head of cattle?
A. Yes, sir.
Q. Whose cattle were they; who owned them?
A. They were in the possession of A. J. Gillespie & Co.
Q. Where were those cattle when that draft was drawn?
A. In the Kansas City stock-yards.
Q. What did the firm of A. J. Gillespie & Co. do with said 133 head of cattle?
A. Shipped them to Chicago.
Q. To whom, if any one?
A. Shipped them to Chicago to the order of A. J. Snider & Co.
Q. To whom, if any one, did A. J. Gillespie & Co. consign those cattle for sale?
A. Rappal Sons & Co.
Q. In what business are Rappal Sons & Co.?
A. Live stock commission.

Q. Where?
A. Union Stock-Yards, Chicago, Illinois.
Q. How long have they been in business there?
A. That I don't know exactly.
Q. Have your firm been shipping cattle to them before?
A. Yes, sir.
Q. To be sold on commission?
A. Yes, sir.
Q. Where did the firm of A. J. Gillespie & Co. get those cattle?
A. They bought them at the stock-yards in Kansas City, Kansas, from A. J. Snider & Co.

223 Q. Who bought them?
A. A. J. Gillespie & Co.

Q. How did they pay for them?
A. By check on the Kansas City Stock-Yards Bank.
Q. Have you the check?
A. Yes, sir.
Q. Produce the check with which you paid for that 133 head of cattle.
A. I do produce it.

(Mr. BISBEE: We now offer in evidence a check drawn by A. J. Gillespie & Co. on the 30th day of September, 1885, on the Kansas City Stock-Yards Bank for $6,506.40, payable to A. J. Snider & Co. The same is marked Exhibit 1 to T. E. Gillespie's testimony.)

Q. Now, you may give the transaction with A. J. Snider & Co. in relation to buying this 133 head of cattle. State what you paid for them.
A. They were bought of A. J. Snider & Co. at 4 cents a pound.
Q. When?
A. On the 30th of September, 1885.
Q. You may state the net amount that those cattle cost A. J. Gillespie & Co.
A. $6,226.40.
Q. Now, then, that amount is what your firm paid A. J. Snider & Co. for those cattle, was it?
A. Yes, sir.

Q. What did you do with those cattle?
224 A. They were shipped to Chicago.
Q. To whom for sale?

A. On a rate bill to Snider & Co., to be turned over to Rappal, Sons & Co. for sale.
Q. And to whom were the proceeds to be accounted for?
A. A. J. Gillespie & Co.
Q. Did you draw a draft on Rappal Sons & Co. on that account for $6,231.10?
A. Yes, sir.
Q. State how you arrived at that amount of $6,231.10.
A. The 133 head of cattle cost $6,506.40, less $280 back freight, and there was $4.70 exchange added.

Q. Then, the $4.70 exchange added to the net cost of the cattle made up the exact amount of the draft?

A. Yes, sir.

Q. Did any one else but A. J. Gillespie & Co. pay anything towards those cattle bought of A. J. Snider & Co.?

A. No, sir.

Q. You may now state what you did, if anything, in relation to buying cattle, whom you bought of, and what you paid for those that were shipped on the 1st day of October, 1885, to Rappal, Sons & Co.

A. On the 1st day of October, 1885, there were 35 cars of cattle bought from Snider & Co., Quinlan, Montgomery & Co.; 375 head of cattle bought of Snider & Co. cost 2 and ½ cents a pound,
225 and the balance from Quinlan, Montgomery—$2.90 a hundred.

Q. How many head from Quinlan, Montgomery & Co.?

A. 440 head, making a total of 815 head.

Q. What was the total cost?

A. $20,88–.82, and back freight deducted, $1,392.80, leaving the net cost $19,491.02, and $14.60 exchange added, making the total amount $19,505.62.

Q. State why you added that exchange.

A. It was the cost of collecting exchange on draft on Chicago.

Q. What did those cattle cost A. J. Gillespie & Co?

A. $19,505.62.

Q. To whom was that 815 head of cattle shipped in Chicago?

A. Rappal, Sons & Co.

Q. For what purpose were they shipped to Rappal, Sons & Co.?

A. They were shipped to them to be sold.

Q. And account to whom?

A. A. J. Gillespie & Co.

Q. Now, did your firm draw a draft on that day on Rappal, Sons & Co. for the exact sum of $19,505.62?

A. Yes, sir.

Q. Is the draft shown you, marked Exhibit E, the draft?

A. Yes, sir.

Q. Was the draft shown you, marked Exhibit D, for $6,231.10 the draft drawn on those 133 head of cattle so shipped?
226 A. Yes, sir.

Q. Now, you may go on and state what other cattle or what cattle A. J. Gillespie bought and paid for on the 3rd of October, 1885.

A. They bought and paid for 121 head of cattle—five cars.

Q. State from whom you bought them.

A. A. J. Snider & Co., J. R. Stoller & Co., Mountjoy, White & Co., and White & Holmes.

Q. How did the firm of A. J. Gillespie & Co. pay for that 121 head of cattle?

A. By checks on the Kansas City Stock-Yards Bank.

Q. Have you those checks?

A. Part of them.

Q. How much money did you pay A. J. Snider & Co. on account of this bunch of cattle?
A. $276.92.
Q. How did you pay it?
A. By check on the Kansas City Stock-Yards Bank.
Q. Is the check now shown you the one?
A. Yes, sir.
Q. Is the check now shown you, dated October 1st, 1885, drawn by your firm, for $8,072, the check you paid A. J. Snider & Co. for the cattle shipped October 1st, 1885?
A. Yes, sir.

(Counsel for complainant offers in evidence said check, and the same is marked Exhibit 2 of T. E. Gillespie's testimony.)

Q. Is the check now shown you, dated October 1st, 1885, drawn by A. J. Gillespie & Co., for $12,930, payable to Quinlan,
227 Montgomery & Co., the check used in paying for those cattle shipped October 1st, 1885?
A. Yes, sir.

Q. (And the same is offered in testimony and marked Exhibit 3 of T. E. Gillespie's testimony. The check for a part of the cattle bought October 3rd, 1885, drawn by A. J. Gillespie & Co., payable to A. J. Snider & Co., for $276.92, is offered in evidence and marked Exhibit 4 to T. E. Gillespie's testimony.)

Q. Is the check which I now show you, dated October 3rd, 1885, for $1,066.90, payable to Mountjoy, White & Co., the check given to that firm in payment for the cattle shipped on that day, about which you have testified?
A. Yes, sir.

(The same is offered in evidence and marked Exhibit 5 of T. E. Gillespie's testimony.)

Q. Is the check which I now show you, dated October 3, 1885, drawn by A. J. Gillespie & Co., for $67, payable to J. R. Stoller & Co., the one given to said firm in payment of the cattle bought of them that day, about which you have testified?
A. Yes, sir.

(The same is offered in evidence, marked Exhibit 6 of T. E. Gillespie's testimony.)

Q. Is the check which I now show you, dated October 3, 1885, drawn by A. J. Gillespie & Co., in favor of A. J. Snider & Co., for $929.67, the one given to Snider & Co. in payment of cattle bought on the 3rd of October, about which you have testified?
228 A. Yes, sir; except $6, which was on another account.

(And said check is offered in evidence and marked Exhibit 7 to T. E. Gillespie's testimony.)

Q. Do the last four checks offered in evidence represent the pay-

ments made by your firm for the whole of the 121 head of cattle shipped to Rappal, Sons & Co. on the 3rd of October, 1885?

A. No, sir.

Q. State how many cattle it does represent.

A. 119 head.

Q. From whom did you buy and what did you pay for the other two head of cattle?

A. They were bought, one from White & Holmes and one from Mountjoy, White & Co.

Q. And what did you pay for them?

A. We paid $2.35 a hundred for the one bought from White & Holmes and $2 for the one from Mountjoy, White & Co.

Q. Did you pay for those two head of cattle?

A. Yes, sir.

Q. What was the total cost of that 121 head of cattle?

A. $2,370.06.

Q. What was the net cost?

A. Less $1,261.97 rebate, freight and rebate from the Wabash railroad, and less $415.84 for 11 cattle which were left out of a previous shipment, leaving a balance of $692.25.

229 Q. State why the draft, Exhibit F, drawn by your firm on Rappal, Sons & Co. was for $691.70.

A. In making up the account we were to add 55 cents; instead of adding we deducted; it was a mistake.

Q. That draft, then, should have been 55 cents larger than it was?

A. It should have been $1.10 larger than it was.

Q. It was the draft, Exhibit 6, for $67 drawn against that consignment of cattle?

A. Yes, sir.

Q. Were all of these cattle in the possession of A. J. Gillespie & Co.?

A. Yes, sir.

Q. And the amounts of money which you have named were all paid by your firm for those cattle?

A. Yes, sir.

Q. And who shipped the last lot of cattle, the 121 head, to Chicago?

A. A. J. Gillespie & Co.

Q. To whom were they shipped or consigned?

A. Rappal, Sons & Co.

Q. For what purpose; what were Rappal, Sons & Co. to do?

A. They were to sell the cattle.

Q. And account to whom?

A. A. J. Gillespie & Co. for the amount of the draft.

Q. You have testified about three drafts on three various shipments; was any portion of those drafts paid to your firm by Rappal, Sons & Co.?

A. No, sir; not to my knowledge.

230 Q. If it had been paid you would have known of it?

A. Yes, sir.

Q. Did your firm receive accounts of sale for these three various shipments of cattle about which you have testified?

A. Yes, sir.

Q. From Rappal, Sons & Co.?

A. Yes, sir.

Q. Examine Exhibit A in this case, which purports to be an account of sale made by Rappal, Sons & Co. showing the 133 head of cattle first shipped to Chicago September 1st, 1885, which net $5,880.25, and state if that account was rendered to your firm as it purports on its face.

A. I believe it was. I was not at home at that time.

Q. Is the same true with relation to Exhibit B, showing account of sales of 810 head of cattle, showing the net proceeds of $16,519.69?

A. The accounts of sales show the duplicate of the one furnished us.

Q. Is the account of sale marked Exhibit C the one made by Rappal, Sons & Co. for 122 head of cattle showing the net proceeds of $1,857.27?

A. Yes, sir.

Q. Have your firm ever received the amount of money named in those three accounts of sales from Rappal, Sons & Co. or from anybody else?

A. No, sir.

231 Q. When the first draft for $6,231.10 was returned to the bank did you give a check to the bank to take it up?

A. I didn't, but the firm did—my brother did.

Q. Is the check shown you, marked Exhibit 4 of Connelly's testimony, the check given for that purpose?

A. Our books show that it is.

Q. It includes protest fees?

A. Yes, sir.

Q. Who gave the check now shown you, dated October 6, 1885, for $19,505.62, marked Exhibit 5 of Connelly's testimony?

A. My brother, Louis J. Gillespie.

Q. Did you know of this transaction yourself?

A. Not on that day. I wasn't home. I did when I got back, a few days afterwards.

Q. Was the check now shown you, marked Exhibit 6 of Connelly's testimony, give- for the last draft for $696.32?

A. Yes, sir.

Q. Those three checks which I have shown you were given to the Kansas City Stock-Yards Bank to take up the three drafts that were drawn on Rappal, Sons & Co.?

A. Yes, sir; and returned protested.

Q. These three bunches of cattle didn't sell for as much at the stock-yards in Chicago as A. J. Gillespie & Co. paid at the stock-yards in Kansas City?

A. No, sir.

232 Q. Has any one paid you the difference between what the cattle actually sold for and what you paid for them?

A. No, sir.

Q. Did these cattle pass into the possession of anybody — to the time they were received by Rappal, Sons & Co.?

A. No, sir; with the exception of the railroad company.

Q. Did you permit or did any of these cattle go into anybody's possession after you bought and paid for them until they were turned over to Rappal, Sons & Co.?

A. No, sir; they were sold in our name, A. J. Gillespie & Co.

Q. They were under your control all the time?

A. Yes, sir.

Q. Up to the time they were turned over to Rappal, Sons & Co.?

A. Yes, sir.

Q. If Rappal, Sons & Co. had any other connection with the cattle than to receive and sell them what was it?

A. To account to us for the costs—for the amount we paid out.

Q. Were you at home when these drafts were returned?

A. No, sir.

Q. Did you see F. J. Rappal, Sr., himself in Kansas City after these drafts were protested?

A. No, sir; I saw him in Chicago.

Q. How soon after?

A. Somewhere along about the 6th, 7th, or 8th of October.

233 Q. What did he say to you, if anything, in relation to paying for these cattle?

(Mr. BROWN: I object to the question.)

A. I went to his office and couldn't find Mr. Rappal, Sr. I found a young man there. He said his father was not at home; that he was on his way from Kansas City. I found him at his house one evening late and had a talk with him in regard to the matter. He said the cattle had been losing money and the boys had been losing money, and they had got behind at the bank and they had refused to carry them any further.

(Objected to by Mr. Brown.)

Q. That was the only explanation you got from him?

A. Yes, sir. He further stated that he would see Mr. Washburn, president of the bank, and see if he could make some arrangement with him to pay the money.

Q. There has been something stated in evidence in relation to a $3,000 note which Mr. Rappal gave your firm for so much of the first draft. Was that note ever paid?

A. No, sir.

Q. Is it good for anything?

A. I guess not. The security is not good and the man who made the note is not good.

Q. What security have you?

A. Second mortgage on some land in Miami county, Kansas.

Q. And the land is not worth more than the first mortgage?

234 A. Yes, sir; the land is not worth more than the first mortgage.

Q. Has the firm of A. J. Gillespie & Co. any security or money or collaterals of any kind to protect them against the amount of money that these cattle brought in Chicago?

A. No, sir; they have not.

Cross-examination by Mr. MILLER:

Q. Mr. Gillespie, who has charge of the books of A. J. Gillespie & Co.?

A. I look after them.

Q. Are you the book-keeper?

A. No, sir; we have a man for that purpose.

Q. When did your firm commence doing business for the firm of W. P. Bowen & Co.; can you tell by referring to your books?

A. I can tell when we opened an account in the name of W. P. Bowen & Co.; it was some time before the first of May—in April 1885.

Q. I will ask you to look at the paper which I now hand you, marked Exhibit 8 of T. E. Gillespie's testimony, and state what that is.

A. That is a statement of account taken from our office ledger.

Q. And sent by whom to whom?

A. Sent by A. J. Gillespie & Co. to Rappal, Sons & Co.

Q. Is it correct?

A. To the best of my knowledge it is.

Q. You may state to what time that account runs.

A. It runs from April 20th, 1885, to June 15th, 1885.

Q. You say it is a correct copy of your ledger account; will you state how your ledger is headed from which this transcript was taken?

235 A. It is headed "Bowen & Co." or "W. P. Bowen & Co." or "Bowen & Rappal."

Q. This is headed how?

A. Bowen & Co.

Q. You may state whether or not you kept upon your books an account with Rappal, Sons & Co.

A. Yes, sir.

Q. State what.

A. A running account was kept with the firm.

Q. And includes what items?

A. Stock we shipped to that firm for various parties.

Q. It didn't include any of the cattle that were mentioned in the statements you may have rendered on account of Bowen & Co.?

A. It didn't include any cattle handled in the name of Bowen & Co.

Q. When did that account with Rappal, Sons & Co. commence?

A. In the fore part of 1885.

Q. And when did the account close?

A. It is not closed up to this time; it is an open account.

Q. Turn to the account of Rappal, Sons & Co. Well, now, do any of these cattle to which you testified yesterday—the 133 head, the

815, and the 122 head of cattle—appear in the account of Rappal, Sons & Co.?

A. Not on our books.

Q. Then you had an account with Bowen & Co. on your books from April 20 until what time?

A. March 10th is the last entry.

Q. Of Bowen & Co.?

236 A. Yes, sir.

Q. Didn't you render statements of account to Rappal, Sons & Co. after March 10th, 1886?

A. No, sir.

Q. Who prepared the statements of account sent to Rappal, Sons & Co?

A. The book-keeper.

Q. Did you examine them before they were sent?

A. I don't know as I did.

Q. Do you know whether they were correct statements of account or not?

A. To the best of my knowledge, they were.

Q. They were sent in the ordinary course of business?

A. Yes, sir.

Q. I will hand you this file of letters from April 20th, 1885, to June 9th, 1885, and ask you to look at them and state what they are—in whose handwriting.

A. The most of them are in mine.

Q. And in whose handwriting are the others?

A. My father's.

Q. They are all in your handwriting or your father's?

A. I believe so.

(The package of letters about which the witness has just testified, being 40 in number, are identified by being marked Exhibit 9 to T. E. Gillespie's testimony.)

Q. Look at the package I now hand you, consisting of — pages, and state of what it consists.

A. Letters.

Q. And what else?

237 A. Statement of number of cattle and figures.

Q. State in whose handwriting the papers in this package marked Exhibit 10 of T. E. Gillespie's testimony, consisting of 66 sheets, are.

A. In my handwriting, my father's, and my brother's.

Q. All members of the firm of A. J. Gillespie & Co.?

A. No, sir; my brother is not.

Q. He is in the employ of A. J. Gillespie & Co.?

A. Yes, sir; he is working with us.

Q. Look at the package of papers marked 11, consisting of about 62 sheets, and state of what the package consists.

A. Letters, statements, and postal cards.

Q. Mr. Gillespie, yesterday you testified to the shipment of 133 head of cattle sent by you to Rappal, Sons & Co. I will ask you to

look at that paper and state whether that paper relates to that shipment.

A. Yes, sir.

Q. In whose handwriting is it?

A. Mine.

(And the same is offered in evidence by the defendant, Ex. 12.)

Q. Look at the cards I now hand you, marked Exhibit 13. I will read it. Kansas City Stock-Yards Co., A. J. S. & Co., account Drum, Bowen, 133 cattle, 162,660; date, September 30, 1885; Buffington, weigh-master; also in the left-hand corner is a memorandum which shows blocks and pens. Read what is upon the back of the card.

238 A. Pay $4.

Q. You may state, if you know, what that means?

A. A. J. Snider & Co., account of Drum; A. J. Snider & Co., sold for Drum.

Q. But what does "Bowen" mean?

A. Sold to Bowen, or to Bowen & Co.

Q. What does "133" mean?

A. The number of cattle.

Q. The figures?

A. Number of pounds.

Q. Endorsement on the back?

A. Price bought at per hundred pounds; signed by F. J. Rappal.

Q. What was written by F. J. Rappal?

A. Pay $4.

Q. And it was signed by F. J. Rappal?

A. His name is not there.

(And the same is offered in evidence.)

Q. You may look at the paper I now hand you, dated October 6, 1885, and marked Exhibit 15 of T. E. Gillespie's testimony, and state whether or not that relates to the 815 head of cattle to which you testified.

A. Yes, sir.

Q. What is it?

A. Statement sent to Rappal, Sons & Co.

Q. By whom?

A. A. J. Gillespie & Co.

Q. Look at the six cards I now hand you, headed "Kansas City Stock-Yards" and marked Exhibit 16 of T. E. Gillespie's testimony, and state whether that relates to the said 815 head of cattle

239 to which you testified yesterday.

A. They have reference to a part of them.

Q. How many?

A. 814.

Q. You may look at the endorsement on the back of the cards and state in whose handwriting those endorsements are.

A. They are endorsed A. J. G.; price per hundred pounds bought

at, and signed "W. P. B.," and some "Bowen." One of the cards is marked "Bowen," by F. J. Rappal.

Q. Which one is marked by F. J. Rappal?

A. The one signed "Bowen."

(And the same are offered in evidence.)

Q. Please look at the papers I now hand you, marked Exhibit 17 of T. E. Gillespie's testimony, and state whether that paper relates to the 121 of the 122 head of cattle which you testified to yesterday.

A. I think it does.

Q. What is that, please?

A. A statement of cattle.

Q. Rendered by whom to whom?

A. By the firm of A. J. Gillespie & Co. to Rappal, Sons & Co.

Q. Look at the package containing eight cards, marked Exhibit 18 of T. E. Gillespie's testimony, headed "Kansas City Stock-Yard Co.," and state whether that relates to the 121 head of cattle last referred to by you in your testimony.

A. Yes, sir.

Q. What are they?

240 A. Scale tickets.

Q. Look at the endorsements on the back. In whose handwriting are they?

A. Some are endorsed and some are not in the handwriting of Bowen.

Q. Please look at your ledger account headed Bowen & Co. and state what the debtor balance was on the 22nd of August, 1885?

A. Our ledger is not balanced at that date.

Q. What is the entry on the date August 22 on your ledger?

A. There are several entries.

Q. What is the fourth one on the debit side?

A. $4.

Q. What is the second entry, August 22, on the credit side?

A. $56.70.

Q. How is that account headed?

A. Bowen & Rappal at that date.

Q. State whether or not the papers I now hand you headed Kansas City Stock-Yards, Missouri, blank date, A. J. Gillespie & Co. in account with W. P. Bowen, was intended to be a transcript of your ledger account, just referred to, commencing with the items just referred to?

A. It is a statement taken from our books. I don't know as it will exactly agree with the dates on the books.

Q. So far as the charges and credits are concerned, is it correct?

A. Yes, sir; at the different dates, it is in the main correct.

241 Q. State whether it shows all the transactions had with W. P. Bowen & Co. or Bowen & Rappal from August 21st, including October 10, 1885.

A. I think it does.

Q. By whom were these statements made?

A. My brother.

Q. In the employ of A. J. Gillespie & Co.?

A. Yes, sir.

Q. State whether or not the pencil memorandum at the end of the statement on the debit side is taken from your books.

A. No, sir.

Q. The items in lead pencil are not taken from your books; and is that true, also, of the items on the credit side of the statement?

A. They are not taken from our books.

Q. The memorandum was made for convenience by you?

A. It was made by me for convenience.

Q. The ledger account from which this statement is made headed "Bowen & Rappal," and again "W. P. Bowen & Co.," and again "W. P. Bowen"—was that intended to be the same account?

A. Yes, sir.

Q. Look at the last page of this statement. I will ask you what the item of date October 5, return draft and fees, $6,232.71, is?

A. It is for a draft protested and taken up by A. J. Gillespie & Co.

Q. On whom?

A. Rappal, Sons & Co.

242 Q. And on the date October 6 there is an item, $19,505.62; what is that?

A. The same.

Q. On the 8th there is an item, $749; what is that?

A. Draft and fees, protested and returned, paid by us.

Q. I will call your attention to the last page but one of this statement and ask you to look at the item, under date of October 5th, $6,217.01, and ask you what that is—why that credit was given.

A. Draft cashed at the bank; ten-day discount draft.

Q. Is that for the same amount, relating to the same transaction, that the item on the other side, $6,233.71, does?

A. It is the same item, less the protest fees and the expenses.

Q. Under date of October 6, on the same page, on the credit side of the account, is an item for $19,407.36; what is that?

A. That is for a draft discounted—ten-day draft, less the discount.

Q. Does that relate to the same transaction that the $19,505.62 relates to?

A. Yes, sir.

Q. Will you explain why these items appear upon both sides of the account?

A. The last one, 5th and 6th of October, was a draft—ten-day sight draft—on Rappal, Sons & Co., which we discounted at the bank and gave them credit for it.

Q. Why did they appear upon the debit side?

243 A. Our drafts drawn before that were returned protested and not paid, and we took them to the bank, where we discounted them.

(The statement referred to in asking questions and in the answers

of the witness is marked Exhibit 19 of T. E. Gillespie's testimony, and the same is offered in evidence.)

Q. What is the book I now hand you?

A. A book kept for memoranda of shipments—of various shipments.

Q. State under what names the shipments of cattle to which you referred yesterday, the 133 head, the 815 head, and the 122 head of cattle appear in that book?

A. W. P. Bowen.

Q. All of them under the name of W. P. Bowen?

A. Yes, sir.

Q. Is that the book of original entries?

A. Yes, sir.

Q. From what memoranda were the entries in that book made?

A. They were made from the scale tickets and bills as we paid for the cattle.

Q. In what other form does the name of Bowen appear in this book of shipments—in what other connection?

A. W. P. Bowen, Bowen & Co., and Bowen & Rappal.

Q. State whether or not they all mean the same account.

A. They all mean the same account.

Q. And this book goes back to what date?

A. June 29, 1885.

244 Q. Does that book contain all of the items of shipment that appear in Exhibit 19?

A. I couldn't say whether it does or not; it shows part of them.

Q. So many as are shown in that book appear under the name of W. P. B. Bowen & Co., or Bowen & Rappal?

A. Yes, sir.

(The book of shipments is marked Exhibit 20, and so much as relates to the account of W. P. B. Bowen & Co. and Bowen & Rappal is offered in evidence.)

Re-examination by Mr. BISBEE:

Q. When did you say your account with Bowen commenced?

A. Some time in April, 1885, it was opened.

Q. State under whose directions, if any one's, you opened this account about which you have testified.

A. Under the direction of F. J. Rappal, Sr.

Q. What were the circumstances in relation to the opening of this account?

A. He had been buying cattle from us and wanted this account kept separate from the firm's business so he could get the statements by themselves.

Q. Did the firm of A. J. Gillespie & Co., in April, 1885, enter into any arrangement with F. J. Rappal, Sr., in relation to paying for cattle for him? And, if so, state when that arrangement was made as nearly as you can.

A. It was some time in April, 1885.

By Mr. BROWN:

Q. Was it in writing?

245 A. No, sir.

Q. Where was the arrangement made?

A. In Kansas City.

Q. At what place?

A. Kansas City Stock-Yards.

Q. In whose office?

A. I don't know whether it was made in our office or in the yards.

Q. Who made the arrangement with Mr. Rappal?

A. My father.

Q. Were you present and heard it?

A. I don't know as I was at that time. Mr. Rappal told me about it afterwards.

Q. Now, you may state what Mr. Rappal told you about the arrangement between himself and the firm of A. J. Gillespie & Co. about doing this business for him.

(Counsel for all of the defendants enter objections to the question.)

A. He said he thought he could make some money by shipping cattle to Chicago, and that he had made arrangements for us to pay for the cattle and forward them to him, and we were to get 25 cents a head for the cattle, and we were to ship them to Rappal, Sons & Co.

Q. Who was to pay for these cattle?

A. Rappal, Sons & Co.

Q. Who was to pay for them as they were bought?

A. A. J. Gillespie & Co.; and they were to ship them to Chicago and hold them in their name until they were paid for.

246 (The counsel for the Union Stock-Yards National Bank objects to the answer of witness as not responsive to the question, being what Mr. Rappal told him the arrangement was. The witness appears to be stating the arrangement and not the words of Mr. Rappal.)

Q. You say that A. J. Gillespie & Co. were to pay for the cattle?

A. Yes, sir.

Q. I want you to sit down and state the whole contract as Mr. Rappal stated to you how the business was to be done.

A. Mr. Rappal said that he had made arrangements with my father to buy and ship some cattle to Chicago, as he thought he could make some money that way. I asked him what the arrangement was. He said he would buy the cattle and we were to pay for them and ship them to Chicago, to Rappal, Sons & Co., and they were to give us one-half of the commission or 25 cents a head for each steer.

Q. What further did he say to you in relation to how it was to be done; in whose possession the cattle should be after they were bought, paid for, and shipped; as to how you were to get the money back you had advanced?

(By Mr. BROWN: Question objected to, especially as it does not ask for anything except what Mr. Rappal stated.)

A. We were to pay for the cattle and ship them to Chicago and hold them in our name and make drafts on Rappal, Sons &
247 Co.

Q. Shipped to whom?

A. Rappal, Sons & Co.

Q. As commission merchants?

A. Yes, sir.

Q. And you were to draw on each bunch of cattle?

A. Yes, sir; for the cost of the same.

Q. Did you commence doing business for Mr. Rappal under that arrangement on April —, 1885?

A. Yes, sir.

Q. Now, you may state what Mr. Rappal said to you, if anything, with relation to how you should keep your accounts.

A. He said he didn't want the account kept in his name, as he didn't want any of the other commission merchants to know he was in the shipping business, and he said he had a man with him by the name of Bowen, and he had made arrangements with him to do business in his name and to keep the account on our books in the name of Bowen & Co.

Q. Who is Mr. Bowen?

A. He is a man that lived, in former years, in Paola, Kansas.

Q. Where does he live now?

A. His family live in Paola, Kansas; they lived at one time in Kansas City.

Q. Did Mr. Bowen have any interest in Rappal's business, so far as you know?

(By Mr. BROWN: The question objected to as improper in form and in substance.)

248 A. Not that I know of.

Q. So far as you know, did any one other than F. A. Rappal, Sr., have any interest in that shipping business?

A. Not so far as we were concerned. I didn't know of any.

Q. Now, you say that you did commence paying for and shipping cattle under this arrangement with Mr. Rappal in April, 1885? Now, I want you should describe the exact details of the manner of doing business; what entries you made on your books, and how you got your money.

A. We would buy a bunch of cattle for Mr. Rappal from some other commission men at the Kansas City Stock-Yards, and they would be weighed in the name of Bowen, and the price would be marked on the back of the ticket.

Q. What do you mean by the ticket?

A. Scale or weigh ticket; and then the ticket would be taken to the office of the man we bought of, and their book-keeper would make out a bill and bring the ticket and bill to us and we would pay for them, and he would give us an order for the cattle.

Q. Who would give you an order for the cattle?

A. The man we bought of.

Q. Then where would the cattle be at that time?

A. In the possession of A. J. Gillespie & Co.

Q. But where would the cattle be?

A. In the Kansas City Stock-Yards, in a pen.

249 Q. Now, you say the man who sold the cattle gave an order for them to A. J. Gillespie & Co.?

A. Yes, sir.

Q. Whom did he give an order on?

A. The Kansas City Stock-Yards Company.

Q. Now, then, that placed the cattle under your control?

A. Yes, sir.

Q. What did you do then?

A. We shipped them to Chicago. We would go to the railroad agent and give another order for the cattle and instructions how to ship them.

Q. What were the instructions?

A. To bill them from A. J. Gillespie & Co., account Bowen & Co., to Rappal Sons & Co., Chicago.

Q. Now, you may state why you put on those instructions account Bowen & Co.

A. To keep them separate from the other cattle.

Q. If that expression, "account Bowen," had any other signification than that of identifying a particular lot of cattle state what it was.

A. There would be no other.

Q. Now, then, to whom did you ship the cattle at the stock-yards in Chicago?

A. Rappal, Sons & Co.

Q. Were you shipping cattle to other parties in Chicago at the same time?

A. Yes, sir.

Q. And were you shipping other cattle to Rappal, Sons & Co. at the same time?

250 A. Yes, sir; at different times.

Q. So that you required the word "Bowen" to be put on the account of sales, so that you could keep the run of those identical cattle?

A. Yes, sir.

Q. And that was the only object?

A. Yes, sir.

Q. Now, what did you do in relation to drawing on Rappal, Sons & Co. for these cattle shipped in this way?

A. After the shipment was fixed up all squarely I would go to work and from the scale tickets make out a bill of costs and make a draft for the cost of the cattle, add the amount of exchange to the bill, and forward the bill and tickets to Rappal, Sons & Co., and the draft we would deposit in the bank for collection.

Q. You forwarded the bill by mail to Rappal, Sons & Co., and the draft for the cost of the cattle, including exchange, was put into a draft, signed by whom?

A. A. J. Gillespie & Co.

Q. What did you do with the draft?

A. We would turn it over to the stock-yards bank for discount.

Q. Was all your business done in this way—by drawing drafts?

A. Yes, sir.

Q. Do you know where the Kansas City Stock-Yards Bank sent all these drafts at Chicago?

251 A. I understand they sent them to the Union Stock-Yards National Bank for collection.

Q. Now, then, were any of these drafts thus drawn by your firm dishonored until the one of September 30th, 1885?

A. No, sir.

Q. How did you collect your commission for doing this business; were your charges put into the draft?

A. No, sir.

Q. How then?

A. About ev-ry 15 or 30 days we would make a statement of the number of cars and the number of cattle, and make a draft on Rappal, Sons & Co. for the amount.

Q. Now, you have been inquired of in relation to your account marked "Bowen," which you say you kept in that way at F. J. Rappal's request?

A. Yes, sir.

Q. I will inquire of you if the account on your books, which are now before you, in the name of Bowen or Bowen & Rappal, is the account for the business you did between April and October, 1885, under the arrangement you have testified to?

A. Yes, sir.

Q. After you had paid for the cattle at Kansas City did the cattle at any time go out of your possession until they were received by Rappal, Sons & Co., as commission merchants?

A. No, sir; they were never out of our possession until they were turned over to Rappal, Sons & Co.

252 Q. State whether or not you had any arrangement with F. J. Rappal, Sr., in relation to holding the possession of the cattle in all instances until your drafts were paid; and, if so, what the arrangement was.

(Mr. BROWN: Question objected to unless the witness states of his own knowledge the arrangement with Rappal.)

A. When the arrangement was made with Mr. Rappal we told him we would hold possession of all stock until they were paid for in Chicago.

Q. What did he say to that?

A. He said that was all right.

Q. Did you ship to Rappal, Sons & Co. any cattle that appear in this account marked "Bowen" between April and October, 1885, excepting under the agreement about which you have testified?

A. No cattle appear in that account to "account of Bowen," other than those under that arrangement.

Q. Was this man Bowen that you have testified about a man of any means?

A. He had some property, but it was mortgaged for more than it was worth.

Q. Do you know a man by the name of Milton James?

A. Yes, sir.

Q. Who is he?

A. A cattle man in the stock-yards.

Q. What connection did he have with F. J. Rappal in this business arrangement with you?

253 A. None that I know of.

Q. You have been shown various weigh tickets which have been put in evidence. On the back of them appear the letters "A. J. G.;" then some figures later, 275 or $4, and then under that in some cases the initials "W. P. B.," and some have the word "Bowen" on them. Explain what those initials—all of them—and the figures mean, and what significance they had to you, if any.

A. The letters "A. J. G." were put on the tickets for the benefit of parties that they bought cattle of, showing where they were to be paid for; the figures is the price, and the letters "W. P. B." to show that the price was correct.

Q. The price per hundred pounds?

A. Yes, sir; the price per hundred pounds.

Q. And "W. P. B." to show that the price was correct?

A. Yes, sir.

Q. And what was the significance; what did it indicate to you?

A. It showed that we bought that bunch of cattle at that price, and that we were to pay for them.

Q. Pay whom?

A. Pay the man we bought the cattle of.

Q. And you paid the price indicated on the back of the ticket?

A. Yes, sir.

Q. And were the initials "W. P. B." or the word "Bowen" always on the tickets?

A. Sometimes Bowen and sometimes Bowen & Rappal.

254 Q. Which Rappal did that mean?

A. F. J. Rappal, Sr.

Q. On one of the tickets shown you the word Bowen appears. In whose handwriting is that?

A. F. J. Rappal, Sr.

Q. What instruction, if any, did you receive from F. J. Rappal, Sr., in doing this business regarding the initials "W. P. B." in the handwriting of Bowen?

A. He said to mark all tickets in that way.

Q. Did the firm of A. J. Gillespie & Co. have any other interest in those transactions than that of holding the cattle until their drafts for the amount they had paid out, including exchange, was paid to them and their commission for doing this business?

(Mr. BROWN: Question objected to as leading.)

A. They had no other.

Q. Now, Mr. Gillespie, did your firm mail to Rappal, Sons & Co.

statements, from time to time, of the transactions that you had with F. J. Rappal, Sr., in doing this business?

A. Yes, sir.

(Mr. BROWN: I object to the question as improper, because the witness has not testified to any transactions had with F. J. Rappal, Sr.)

Q. Then is Exhibit 19 of T. E. Gillespie's testimony a copy of one of the statements thus made to Rappal, Sons & Co.?

A. It is, excepting some words in lead pencil on the last page.

Q. Is the ink part of said exhibit a copy of it?

A. I think it is.

255 Q. Now, if Rappal, Sons & Co. or F. J. Rappal, Sr., ever at any time made any objections to the account of A. J. Gillespie & Co. as mailed to them from time to time between April and October 10, 1885, state what those objections were.

A. There were none made, to my knowledge.

Q. If any had been made, would you have known of it?

A. Yes, sir.

Q. Referring now to the identical cattle in question in this suit, point out upon said Exhibit 19 the first charges on the Bowen account for money paid out for the cattle in question and read such charges to the reporter.

A. The first lot was on the 30th of September, 1885, 133 head of cattle, weight, 162,660 pounds, at $4 a hundred, amounting to $6,506.40.

Q. And is that the item for which you drew the draft dated September 30, 1885, for $6,231.10?

A. That is the item, less the back freight, and the exchange added.

Q. Now, read to the reporter the items as charged thereon for the 815 head of cattle shipped October 1st, 1885.

A. Under date of September 30, 1885, 375 cattle, weighing 322,880 pounds, at $2.50 per hundred, making $8,072. Then the next bunch of 102 cattle, weighing 101,870 lbs., at $2.90 a hundred, amounting to $2,954.23. The next lot was 85 head of cattle, weighing 85,610 lbs., at $2.90 per hundred lbs., making $2,482.69. The next

256 lot was 82 head of cattle, weighing 81,735 lbs., at $2.90 per hundred, amounting to $2,370.31. The next lot was 78 cattle, weighing 79,790 lbs., at $2.90 per hundred, costing $2,313.91. The next lot was 92 head of cattle, weighing 92,120 lbs., at $2.90 per hundred, amounting to $2,671.48. On the same date one weighing 800 lbs., at $2.40 per hundred, amounting to $1,920. That makes the 815 head of cattle shipped on October 1st, 1885.

Q. Now, you may read to the reporter the items on said account showing the cost of the 122 head of cattle shipped October 3rd, 1885.

A. On October 3, 1885, 2 cattle, weighing 1,900 lbs., at $2.75 a hundred lbs., amounting to $52.25; 3 cattle, weighing 3,080 lbs., at $3.40 per hundred lbs., costing $251.60; 13 cattle, weighing 15,150 lbs., at $3.40 per hundred, costing $515.10; 2 cattle, weighing 1,880

lbs., at $2.50 a hundred, amounting to $47; one cattle of 1,000 lbs., at $2 a hundred, amounting to $20; 79 head of cattle, weighing 60,970 lbs., at $1.75 per hundred, amounting to $1,066.95, and one cattle weighing 830 lbs., at $2.35 a hundred, costing $19.58; 12 head of cattle, weighing 10,070 lbs., at $2.75 a hundred, amounting to $276.90, and one cattle in the same shipment on this statement under October 3; 1 head of cattle, weighing 800 lbs., at 2 cents a pound, making 121 head of cattle shipped on October 3rd, 1885.

Q. Those lots of cattle form the basis of this draft of October 3rd for $691.70, did it?

A. It formed the cost of the cattle of October 3rd, and
257 there was some rebate freight collected from the Wabash railroad and deducted, and the draft was drawn for $691.70, as per statement sent to Rappal, Sons & Co.

Q. That amount of money, then, less a mistake of $1.10 for exchange, was just your interest in that bunch of cattle at that time?

A. Yes, sir.

Q. Now, the three drafts—Exhibits A, B, and C—represented exactly, did it, the interest A. J. Gillespie & Co. had in those three bunches of cattle, excepting your commission for doing the business?

A. Yes, sir.

Q. Now, turn to the same statement and read to the reporter the items of debit in the Bowen account when you were advised of the non-payment of those three drafts.

A. On this statement, under date of September 30, 1885, to their credit, cash draft, $6,231.10; under date of October 1, 1885, cash draft, $19,505.62; under date of October 3, 1885, by cash draft, $691.70.

Q. And those entries were made, were they, at the time the Kansas City Stock-Yard Bank discounted the three drafts for A. J. Gillespie & Co.?

A. Yes, sir.

Q. Now, what are the next entries upon that statement with relation to these three drafts?

A. On October 5th, 1885, the draft for $6,231.10 was returned, and we gave the Stock-Yards Bank a check for the protested draft for $6,233.71.

258 Q. And how was it made up; why was the check larger than the returned draft?

A. For protest fees and expenses. Under date of October 6th we gave a check to the stock-yards bank for a draft and protest fees for $19,505.62. Under date of October 8th we gave them a check for $700.90; that included draft for $691.70 and protest fees and telegraphing bills.

Q. Now, what was the next item of credit in that account growing out of that transaction?

A. At the time these drafts were returned protested F. J. Rappal, Sr., gave a ten-day sight draft for $3,234.34 and a note for $3,000, making the amount of the first draft $6,231; that was protested, and we gave their account credit for this draft, which is credited on

this account under date of October 5th, less the discount, making a credit on our ledger of $6,270.01.

Q. Did the two items you have just given, which you credited to the Bowen account, make up the draft of September 30th, 1885?

A. They did, less the discount.

(It is agreed that copies of the $3,234.34 draft at ten days and the $3,000 note, dated October 5, 1885, signed by Rappal, Sons & Co., and the $3,000 note made by W. P. Bowen, may be used as exhibits in this case instead of the originals, and they are offered in evidence as Exhibits 20, 21, and 22 of T. E. Gillespie's testimony.)

Q. Go on with the next one.

A. On October 6, 1885, the Bowen & Co. account is credited
259 with a ten-day draft for $19,407.36, signed Rappal, Sons & Co., drawn on Rappal, Sons & Co., Chicago.

Q. That credit is for the full amount of the original draft, less the discount?

A. Yes, sir.

Q. Is that as far as the account is carried out in ink?

A. This is for cattle sold in Kansas City after October 1st.

Q. You may now state, after allowing the account of Bowen & Co. all the items of credit which have came into your possession up to the present time, how the account stands or how much money A. J. Gillespie & Co. have paid out, saying nothing of interest, more than they have received by reason of the non-payment of these drafts.

A. $24,805.72 at the present time.

Q. Did you see F. J. Rappal, Sr., at Kansas City after you had had notice of the non-payment of the three drafts known as Exhibits A, B, and C?

A. No, sir.

Q. State what the custom has been during your experience in doing business with the Kansas City Stock-Yards Bank with relation to being notified by the bank of the non-payment of any draft drawn by you on Chicago that went through their bank.

Mr. BROWN: Objected to.

A. We have always been notified within, I think, a few minutes after they received a telegram.

260 Q. And, further, what has been the custom with relation to the bank receiving notice from the Union Stock-Yards Bank, Chicago, referring to the non-payment of any draft?

(Mr. BROWN: Objected to.)

A. If drafts are not paid we are notified at once.

Q. The custom has been to notify the bank at once and the bank has notified you?

A. Yes, sir.

Q. In the matter of this first draft, dated September 30, 1885, for $6,231.10, if you had been notified on Friday, October 2nd, 1885, of the non-payment of that draft, what would you have done with relation to the 815 head of cattle that were shipped the day before?

A. We would have shipped them to some other house.
Q. How would you have done it?

(Mr. BROWN: The question is objected to.)

A. The cattle would have gone just as billed, with orders for them to be turned over to some other house.
Q. How?
A. By endorsing the orders to some one else.
Q. Through the telegraph or otherwise?
A. If the cattle had been shipped and gone the night before we would have telegraphed.
Q. You could, then, have changed the consignment of the cattle by changing from Rappal, Sons & Co. to some other commission house in Chicago?
A. Yes, sir.
Q. How late could you have done that if you had had notice of the non-payment of the first draft; up to what time could you
261 have done that?
A. If the cattle had arrived in Chicago in the morning after I could have stopped them that afternoon.
Q. What morning?
A. The morning of October the 3rd—Saturday morning. I could have stopped them any time before six o'clock in the afternoon of October 2nd by telegraphing.
Q. And you say if you had had notice of the non-payment of that first draft on Friday you would have changed the consignment of the 815 head of cattle?
A. I would.
Q. Wouldn't your firm?
A. That has always been our custom.

Mr. BROWN: I object.

We would have done so.
Q. How long have you known Martin James?
A. Six or eight years.
Q. Has he any property?
A. Not to my knowledge.
Q. Had he any in 1885?
—. ——.
—. How long have you known W. P. Bowen?
A. Four or five years.
Q. Has he any property, or had he in 1885?
A. Not that I knew of personally.
Q. Has any member of the firm of Rappal, Sons & Co. had any property since October 6, 1885?
A. No, sir.
Q. I will ask you what credit the firm of Bowen & Co. had with your firm?
A. They had no credit with us.
262 Q. Now, you have stated that on Tuesday, October 6, 1885, you gave to the Kansas City Stock-Yards Bank a check for

the $19,505.62 draft returned. I want to know when that draft would have had to have been mailed from Chicago to have reached Kansas City on Tuesday so you could have taken it up.

A. It would have had to leave Chicago on Monday morning and arrive here between 8 and 10 o'clock on the following morning in order for us to take it up on October 6th.

Cross-examination by Mr. BROWN:

Q. What time does the mail get to Kansas City from Chicago?

A. One train leaves in the afternoon and another in the morning.

Q. What time does the mail get here from Chicago—each mail?

A. Some time between the hours of 7.30 and 9 o'clock in the evening and between 8 and 9.50 in the morning. I don't know what the schedule time —; that is the time-card time.

Q. You say the firm of Bowen & Co. had no credit with you. Who composed the firm of Bowen & Co., so far as you know?

A. The firm of Bowen & Co. with us was F. J. Rappal, Sr., individually, at this point.

Q. Did you hold Mr. Bowen liable to you for contracts made by F. J. Rappal in the name of Bowen & Co.?

A. No, sir.

Q. What credit had the firm of Rappal, Sons & Co. with you?

263 A. We thought the firm was responsible for any shipments we made for them.

Q. What was their credit with you?

A. None.

Q. Well, then, neither Bowen & Co. nor Rappal, Sons & Co. had any credit with you?

A. No, sir.

Q. Did you understand that F. J. Rappal, Sr., had property?

A. Yes, sir.

Q. Did you understand that the Rappal boys, sons of F. J. Rappal, Sr., had any property?

A. I didn't know of any that they had.

Q. You have testified as to certain arrangements which you say F. J. Rappal & Co. made with the firm of A. J. Gillespie & Co. with reference to the business in which they were engaged. How did you come to your knowledge of those arrangements?

A. Partly through Mr. Rappal and from my father also.

Q. State exactly how much of that arrangement you learned from Mr. Rappal, and I desire you to do that by stating as nearly as possible the first conversation you had with Mr. Rappal, the time when you had the first conversation with Mr. Rappal, and then stating the conversation in the words of Mr. Rappal as nearly as you can remember—that is, the words or the substance as nearly as you can remember.

A. I don't know as I can give the words exactly. It was

264 some time, I think, in the fore part of April, 1885.

Q. What did he say? And also state, in giving the conversation, what you said to him.

A. He said he thought he could make some money by shipping cattle to Chicago, and that he had made arrangements with my father for us to pay for them and forward them to his house in Chicago. I asked him how he wanted us to do this business for him. He said we were to buy the cattle and make out a statement and send it to the boys, and send the draft and ship the cattle the same as we were doing for other parties.

Q. Was that all of the conversation?

A. That is about all I remember in regard to the matter.

Q. When was the next conversation with Mr. Rappal?

A. I couldn't tell you.

Q. Do you remember any other?

A. Not until we had been doing the business for him some time; he thought we were getting too much money.

Q. What did he say?

A. He said he thought were getting too much money by doing too little work, and that some other parties had offered to handle the stuff for less money, and I told him we couldn't do it for any less; and he changed his account, and I think Snider & Co. bought his cattle for him.

Q. Was this what Mr. Rappal said to you: that he thought you were getting too much money out of the business for the
265 small amount of work you did, and that other people had offered to do it for less?

A. Yes, sir.

Q. And what was your answer?

A. I told him we couldn't do it for any less.

Q. What did he say?

A. That is about all there was of it.

Q. That was the end of that conversation?

A. Yes, sir.

Q. When was the next conversation you had with Mr. Rappal?

A. Some four or five days afterwards he came to me and said: "I have got mixed up and want you to help me out?"

Q. What did you say?

A. I said, "I will help you out."

Q. What was the next conversation?

A. The next day he said, "It has been too much trouble for me; you had better ship the cattle for me; you can do it better than I can."

Q. What did you say?

A. I said, "All right."

Q. Did he say anything more?

A. Not to me.

—. ——.

Q. The next conversation was a couple or three days after. He said he had made arrangements with father for us to do the business for the same as the other houses had offered to do it for—on the basis of 25 cents a head for commission.

Q. What did he say you were to get for it; tell the whole conversation?

266 A. He said we were to get the same as other parties—$2.50 a car.

Q. When was that conversation?

A. I can't give the dates; it was some time about a month or a month and a half before this matter came up.

Q. Well, did you ever have any other conversation with him?

A. Not as I remember of.

Q. Then, you have given as nearly as you can all the conversations which you had with Mr. Rappal up to this time in relation to this business?

A. Yes, sir.

Q. Do you remember writing to Rappal, Sons & Co. at different times instructions to charge various small sums to account of F. J. Rappal and credit Bowen & Co. with it?

A. Yes, sir.

Q. What was the necessity of crediting Bowen & Co. as well as debiting F. J. Rappal, Sr., if F. J. Rappal was Bowen & Co. in your mind?

A. Those were our instructions from Mr. Rappal, because it was money given to Mr. Rappal which he wanted charged to his individual account and kept separate from his cattle account.

Q. He also wanted it not only debited to his personal account upon the books of Rappal, Sons & Co., but he wanted it credited to the account of Bowen & Co. and gave you instructions to that effect, did he not?

A. Yes, sir.

267 Q. The other parts of the arrangement which you have testified to as existing between the firm of A. J. Gillespie & Co. and F. J. Rappal, Sr., not included in your accounts of the conversations which you had with F. J. Rappal personally, you learned from your father, did you not?

A. Yes, sir.

Q. In answer to a question in your direct examination you said that, so far as you knew, Bowen had no interest in the deals carried on by F. J. Rappal, Sr., in the name of Bowen & Co. Do you pretend to have any personal knowledge of the business relations between F. J. Rappal and Mr. Bowen?

A. I don't.

Examination by Mr. BISBEE:

Q. State your full name.

A. Peter Connelly.

Q. Where do you reside and what is your business and what was it in 1885?

A. I reside in Kansas City, Missouri. I am cashier of the Kansas City Stock-Yards Bank, and was at the date mentioned.

Q. Are you acquainted with the members constituting the firm of A. J. Gillespie & Co.?

A. I am.

Q. Where do they do business?
A. In the Kansas City Stock-Yards.
Q. What is their business?
A. Live stock commission merchants.

Q. Are you acquainted with the Union Stock-Yards
268 National Bank of Chicago, Illinois, and also with the firm of Rappal, Sons & Co.?

A. I am.
Q. How long have you known them?
A. I have had a business acquaintance with the bank for several years back, and had the same kind of an acquaintance with Rappal, Sons & Co., which dates from some time last year—August or July. I have known of them prior to that time.
Q. Examine the paper I now show you, marked Exhibit D, purporting to be a draft drawn by A. J. Gillespie & Co., on the 30th day of September, 1885, on Rappal, Sons & Co., of the Union Stock-Yards, Chicago, Illinois, for $6,231.10, and state if you ever saw the draft before; and, if so, when and under what circumstances.
A. It is likely I may have seen the draft when it went through the bank or when it was returned after having been forwarded for payment.
Q. Was that draft placed in your bank and forwarded to the Union Stock-Yards National Bank, Chicago, for payment?
A. It was.
Q. Can you state when it was sent by your bank to the Union Stock-Yards National Bank, Chicago?
A. The date would direct me, in the first place, and our draft register would verify whether it was sent on that day—on the 9th and 30th.
Q. What is the meaning of that?
A. The 9th month and 30th day.
269 Q. September?
A. Yes, sir; September is the 9th month.
Q. Was it forwarded on the same day?
A. Yes, sir.
Q. Have you examined your draft register to verify whether it was forwarded that day?
A. I have.
Q. Can you state when you first received notice that that draft was not paid?
A. I can by referring to correspondence.
Q. Have you the correspondence with you?
A. I believe I have a telegram. (Witness produces telegram.) The first advice I had of the non-payment of that draft was this telegram.
Q. Read it.
A. "9, 3, '85. Dated Union stock-yards, Chicago, Illinois. Directed to Kansas City Stock-Yards. Rappal's $6,200 not paid; have nothing to remit Commercial National Bank. G. E. Conrad, cashier."
Q. What is the date, in fact?

A. There it is.
Q. Are you willing that it should go?
A. I would rather preserve it. The memorandum on it seems to be rather imperfect.
Q. What is the date?
A. It is not very evident what it is.
Q. When, in fact, did you receive it?
A. I received it some time after the $6,000 and odd draft had been forwarded.
Q. Did you receive it October 3rd?
A. I could not say more than it shows itself.
Q. You have spoken of "9, 3;" isn't the "9" a mistake?
270 Shouldn't it be "10?"
A. I should think it should.
Q. That would make it October 3rd, wouldn't it?
A. In order to fix the date, here is a memorandum I took from the letter book—a copy of a telegram. That "9, 3" means "10, 3."
Q. Now, look at the figures, "2.30 p. m.," and state what they indicate on that telegram.
A. Well, that seems to be a memorandum of the receiver—the telegraph operator—as to the time when it was received, I should think.
Q. It indicates that it was received at Kansas City at 2.30 p. m., October 3rd, does it not?
A. Yes; that is what I should take it to mean.
Q. Did you have any other advice in relation to this draft than that telegram which you have just presented, on that day?
A. I hadn't.
Q. What does the latter part of the telegram mean, with relation to depositing money?
A. I wanted money deposited at the Commercial National Bank, and had wired them to deposit a certain amount to our credit at the First National Bank.
Q. Now, can you state when you received the draft, Exhibit D, back at your bank?
A. This one?
Q. Yes.
A. Without reference to letter files, I couldn't.
Q. Have you any letter files present to refer to?
A. No, sir.
Q. Have you any recollection about it whatever?
A. No, sir.
271 Q. I will inquire of you if the firm of A. J. Gillespie & Co. gave you a check for that draft when it was received back at your bank.
A. No, sir. My recollection in regard to this is that it was taken up by a note for $3,000, and a draft of Rappal, Sons & Co. on Rappal, Sons & Co. for $3,231.10, and exchange would make it something like $3,234.
Q. What was the time of the draft?
A. 10 days.

Q. Let me refresh your recollection by referring you to this check signed by A. J. Gillespie & Co., drawn for $6,233.71; wasn't that check given for that draft?

A. Well, now, I think I can tell all about it. That draft was returned; the protest fees added made the amount $6,233.71; $231 is for protest fees, and then the 30 cts., like enough, was for telegram. That would make the amount of this check, and undoubtedly that check was given to take up this draft.

Q. Now, you spoke also of receiving at that time a ten-day draft drawn by Rappal, Sons & Co. upon their own firm at Chicago for $3,231.10; was that draft paid?

A. No, sir.

Q. Was it presented for payment?

A. It was forwarded and presented for acceptance and payment?

Q. Was it accepted?

A. No, sir.

Q. Nor paid?

272 A. To the best of my recollection, it was protested for non-payment and afterwards for non-acceptance.

Q. Was the note for $3,000 ever paid, or any portion of it?

A. No, sir.

Q. Now, looking at the check held in your hands refreshes your memory. When did you receive that draft, Exhibit D, back at your bank?

A. Well, the inference to my mind would be that it was October 5th, because as soon as I would receive the draft back I would go to Gillespie to take it up, and, as the check seems to be dated Oct. 5, I must have got the draft that day.

Q. The check taking it up?

A. Yes, sir.

Q. And nothing has ever been paid to you out of the $3,000 or the $3,200 and odd draft?

A. No, sir.

Q. Please examine Exhibit E, which purports to be a draft drawn by A. J. Gillespie & Co. on Rappal, Sons & Co., on October 1st, 1885, for $19,505.62, and state whether such draft was given to you or your bank to be forwarded for collection.

A. No, sir; it was not given to be forwarded for collection.

Q. How then?

A. It was received by us and placed to the credit of A. J. Gillespie & Co. in the nature of discount. We took it at the current rate of exchange at Chicago.

Q. What did you do with the draft after it was discounted?

273 A. We forwarded it to the Union Stock-Yards National Bank at Chicago, as our endorsement stamp will show.

Q. Can you tell—have you any memorandum to show on what day you forwarded that draft to the Union Stock-Yards Bank at Chicago?

A. Yes, sir; I have an extract from our draft register.

Q. State when you did forward it.

A. Our draft register, pages 172 and 173, Oct. 2nd, 1885, shows

that the draft, dated Oct. 1, on Rappal, Sons & Co., for $19,505.62 was forwarded Oct. 2nd to the Union Stock-Yards National Bank. The letter book, at pages 264, refers to the same transaction, 10 and 2, showing that we forwarded that draft on October 2nd, 1885.

Q. About when was that letter mailed enclosing that draft?

A. It was mailed, as all our mail was, at the Union depot post-office, and went out on the afternoon train, whatever the hour, October 2nd.

Q. If you know, you may state when, in the due course of the mails, the letter you mailed on Oct. 2nd, 1885, enclosing the $19,505.62 draft would reach Chicago.

A. In the regular course of the mails it would reach Chicago between 1 and 2 o'clock p. m. the following day, which would be Saturday, Oct. 3rd.

Q. When did you have any advices from any source that that draft, Exhibit E, was not paid?

A. I have a telegram from the Union Stock-Yards National Bank, dated 10, 5, 1885, which reads: "P. Connelly, assistant cashier: Rappal, Sons & Co.'- nineteen thousand and odd not paid. Signed
274 C. Jamison, assistant cashier."

Q. What do you mean by "10 and 5?"

A. It means 10th month and 5th day, which would be October 3rd.

Q. When was that telegram received in Kansas City?

A. I see here "2 p. m."

Q. Had you received any advice of the non-payment of that draft before the receipt of that dispatch?

A. I had not.

Q. Do you know when you received that draft back at your bank in Kansas City?

A. I don't by any recent reference to dates, but, assisted by this check, October 6th would have been the day when I got it back.

Q. Did the firm of A. G. Gillespie & Co. give you the check which you now hold in your hands to take it up?

A. And that check is dated October 6th, 1885? Yes, sir.

Q. Is it for the same amount as the draft?

A. Yes, sir.

Q. Has any person in behalf of Rappal, Sons & Co. or the Union Stock-Yards National Bank paid your bank any money or anything on account of that draft?

A. No, sir.

Q. Examine the paper I now show you purporting to be a draft drawn by A. J. Gillespie & Co. on Rappal, Sons & Co., dated October 3rd, 1885, for $691.70, and state what connection, if any, your bank had with that draft, and give the dates.

275 A. That draft went through our office in the usual way and was discounted, and A. J. Gillespie & Co. deposited this draft for their credit, which we took at the current rate of exchange and forwarded it to the Union Stock-Yards National Bank for collection for account of Kansas City Stock-Yards Bank.

Q. Can you state when you mailed that draft to the Union Stock-Yards National Bank, Chicago?

A. I have nothing to direct me except the date of the draft.

Q. When were you first advised that that draft, Exhibit F, was not paid, by whom, how?

A. This telegram, dated 10, 5, which is October 5, 1885.

Q. What time of the day?

A. 3.56 p. m.

Q. Read it.

A.—

"P. Connelly, acting cashier:

Firm say cattle were sold Saturday and the whole proceeds against account Bowen & Co., draft $19,000 odd and $600 odd protested; don't think they have anything to pay with.

GEORGE CONRAD, *Cashier.*"

That was in answer to a telegram from me asking them to apply the proceeds of the sale of those cattle account of that $19,000 odd draft to the payment of it, and I believe I may safely say I never had any notice of the $600 draft prior to this—of its non-payment.

Q. Mr. Conrad, in his testimony, produced a telegram from you dated Kansas City, Oct. 5, 1885, reading as follows:

276 "Is Rappal, Sons & Co.'- 19,000 odd paid? Letter October 3rd.

P. CONNELLY,
Assistant Cashier."

I will ask you to state why that telegram read "Letter October 3rd" when in fact it was mailed Oct. 2nd, as you have stated. Can you explain that?

A. Well, the only explanation that I can give would be simply it is dated October 3rd; and casting back my mind for the date I just missed it by one day.

Q. Did A. J. Gillespie & Co. give you a check for that draft, Exhibit F, when it came back on the 7th of October?

A. Yes, sir.

Q. What instructions, if any, did you give the Union Stock-Yards National Bank at Chicago in relation to notifying you of the non-payment of any draft sent by your bank to them?

A. In answer to that I must give a short history of my connection with the office. I went to the Stock-Yards Bank from the Bank of Kansas City when the Stock-Yards Bank was under the management of Capt. Boreman, who was succeeded by Mr. Sinclair.

(By Mr. BROWN: It is understood that all objections to the competency of this testimony are reserved.)

Q. When was that?

A. About 1878; and I was in a subordinate capacity until July, 1885; but our correspondence with the Union Stock-Yards National Bank shows, so far as I know, that it had always been the custom of

that bank to wire us of the non-payment or non-acceptance
277 of any paper. Whether it had been by the positive instructions of the Bank of Kansas City or from the Union Stock-Yards Bank, under the management of Capt. Boreman, I couldn't say, but it was the invariable custom.

Q. What was the custom?

A. With the exception of this transaction, we never had failed to receive prompt notice by wire of the non-payment or non-acceptance of any draft sent them.

Q. You may state, generally, whether you sent any considerable quantity of drafts.

A. Yes, sir; our correspondence was very large.

Q. Run up into the millions every year?

A. Yes, sir; I should consider it would. In active seasons of shipment it was not uncommon to have $40,000 to $60,000.

Q. A day?

A. Yes, sir.

Q. It was the invariable and universal custom to notify your bank of the non-payment or non-acceptance of any paper?

A. It had been from the time I went to the yards and has been since. This would mark a single exception to that custom.

Q. While you were acting in a subordinate capacity for these two banks at Kansas City were you in a position to know of this custom?

A. I was.

Q. And do you know that it was the custom during all these years?

A. I did know.

278 Q. Did you have any occasion at any time to inquire of the Union Stock-Yards National Bank at Chicago in relation to the financial condition of Rappal, Sons & Co.?

A. I did.

Q. And did you receive any answer to your inquiry?

A. I did.

Q. Will you produce and read it?

A.—

"UNION STOCK-YARDS NATIONAL BANK, *July* 20, 1885.

P. Connelly, Esq., assistant cashier, Kansas City, Mo.

DEAR SIR: Your favor of the 17th inst. received. Rappal, Sons & Co. are a firm in good standing, financially and otherwise. I don't think they keep much ready money in the business, but F. J. Rappal owns large farms near Joliet and is estimated worth $50,000 to $60,000, He is a man of high character and has always had good credit, even before he had any means.

Yours truly, G. E. CONRAD, *Cashier.*"

Q. Have you any other letter on that subject?

A. No, sir.

Q. Did their recommendation influence you in discounting drafts drawn by parties on Rappal, Sons & Co. on stock consigned to them for sale?

(By Mr. BROWN: Objection reserved.)

A. It certainly influenced me to a very great extent, to the extent of being willing to take drafts without the intervention or security of any commission merchants. I was willing to take Rappal's business on his own account.

279 Q. Have you exhibited that letter to the firm of A. J. Gillespie or any member of that firm, or said anything in relation to Rappal, Sons & Co. based upon the information you received from that letter?

A. I showed the letter to Mr. Gillespie, Sr., after I had received it, but it was not for his benefit I wrote for it.

Q. You did show it to A. J. Gillespie at some time afterwards?

A. Yes, sir.

Q. Did you have any conversation with A. J. Gillespie in relation to the firm of Rappal, Sons & Co., based upon that letter?

A. Not much. I showed him the letter. The conversation was very brief.

Q. Referring to the letter?

A. Certainly.

Cross-examination by Mr. BROWN:

Q. You say that this transaction constituted the only exception, so far as you know, as to being advised as to the non-payment of any draft; how did this transaction make an exception?

A. What I meant to say was that this was the only instance where they failed to advise us.

Q. They did fail?

A. Yes, sir.

Q. When?

A. They failed with the $600 draft and with the $6,000 and odd draft, and I don't recollect just exactly about the $19,000 and

280 odd, but, considering when our papers should have reached them and been presented for payment, they didn't follow their usual custom in advising us.

Q. The draft sent on the 30th day of September, 1885, would, in due course of the mails, have reached Chicago—when did you say?

A. It would reach Chicago on the first day of October, in the afternoon.

Q. When would it reach the Union Stock-Yards National Bank?

A. I don't know.

Q. Would it reach there so it could be presented for payment or be entered by them upon their books until the business hours of October 2nd?

A. Possibly it might not.

Q. It couldn't, could it?

A. Well, I don't know but you are right. The train comes in about two o'clock, and there should be time for distribution; and as to the mail facilities of the stock-yards, I don't know.

Q. It is a matter of fact, in this custom you have testified about, the advices which you got were of the acceptation of drafts, sent upon one day, upon the second day after?

A. I don't think that would apply to the $600 draft.

Q. I am asking about your custom.

A. How soon after they got our draft they wired, I don't know, but it has always been our understanding that as soon as a draft is refused they wire us.

281 Q. You have never known of getting a dispatch showing the refusal of a draft or the acceptation of a draft upon the next day, but it has always been upon the next day but one?

A. Well, I never measured the time.

Q. Mr. Connelly, you did get a telegram, which you have presented here, showing the non-payment of the $6,200 and odd draft upon October 3rd?

A. Whatever the dates were, it shows for itself; I got it in answer to mine, not as voluntary on their part.

Q. You got it after sending yours, but you did, in fact, get it?

A. Yes, sir.

Q. And it was in answer to yours, but you are not prepared to say that the Union Stock-Yards National Bank would not have sent a telegram to you had you not telegraphed?

A. No, sir.

Q. About the non-payment of the $1,900 and odd draft—you did receive a telegram about that on October 5th, did you not?

A. Yes, sir.

Q. And also of the non-payment of the $600 draft upon October 5th, did you not?

A. Yes, sir; on October 5th.

Q. And this telegram you have also presented in evidence?

A. Yes, sir.

Q. If the draft for $19,000 and odd and $600 draft was not presented or refused until October 5th you got advice of that the

282 day they were refused?

A. That is a fact.

Q. Are there not occasions when you sent a draft upon one *one* day and it was presented at the Union Stock-Yards National Bank the second day thereafter, and then was held over for one day and paid, and in those cases did you receive any advice of the non-payment upon the first presentation of the draft?

A. Well, that is a thing of which I didn't think anything at all about, as to what the Union Stock-Yards National Bank does.

Q. You have testified that it was the universal custom of the Union Stock-Yards National Bank to advise you of the non-payment of sight drafts. I ask you whether there may not have been cases when a sight draft was not paid upon the day when it was presented, but afterwards paid.

A. I know whenever there was a non-payment or non-acceptance of a draft they wired us; what was going on there I don't know.

Q. A draft may not be paid upon the day when it is first presented and may be paid upon the second presentation?

A. In regard to that I would say that if the Union Stock-Yards National Bank allowed so — as a day to go over they would be liable for the money.

Q. Now, Mr. Connelly, I want to ask you a question: You say that the recommendation or the letter which was received by
283 you from the Union Stock-Yards National Bank influenced your conduct in discounting the drafts drawn upon Rappal, Sons & Co., did you not?

A. Well, I believe that is about what it was.

Q. Those drafts which were refused (I am not speaking of the ten-day drafts, but of the sight drafts which were refused) were drafts drawn upon Rappal, Sons & Co. and not accepted by them?

A. The first draft?

Q. The three.

A. Two of the sight drafts, one of A. J. Gillespie & Co. on Rappal, Sons & Co. and the other of Rappal, Sons & Co. on Rappal, Sons & Co.

Q. They were not accepted?

A. They were not accepted.

Q. Would the recommendation of the firm of Rappal, Sons & Co. or of any member of their firm influence you to believe that that firm would accept or pay sight drafts if they claimed that they were not indebted to the person drawing it?

A. The head of the firm was here present and I knew he was buying these cattle. No; I believe that is right; he might not pay Gillespie, because he didn't owe him; that is, I take it, what you mean.

Redirect examination by Mr. BISBEE:

Q. As a matter of fact, in this particular case, did the letter which you received from Conrad in relation to Rappal, Sons & Co. influence you in your action in discounting for A. J. Gillespie
284 & Co. these three drafts marked A, B, and C?

A. It did; I state that distinctly, and after the receipt of that letter I would have shipped Mr. Rappal's cattle without the endorsement of Gillespie or anybody else, and I would have been willing to have done it on the faith of that letter.

Q. Did you see Mr. F. J. Rappal after these three drafts, marked A, B, and C, were protested?

A. I don't think I did. I saw Mr. Rappal on the faith of my telegram, and I am in doubt whether the drafts had been received back.

Q. Did you know they were protested?

A. Yes, sir.

Q. What did he say in relation to those drafts?

(By Mr. BROWN: Objected to.)

A. I don't pretend to recall the exact words, but the purport of the conversation was that it was all right, and that he couldn't fully explain it, but that as soon as he got up there he hadn't the least doubt but what it would be all right.

Q. He had been here some time previous to the drawing of the three drafts?

A. He had been here since early in the spring.

Q. In Kansas City?

A. Yes, sir; in the stock-yards.

Q. He gave the other ten-day drafts to take up the $19,000 and $600 drafts?

A. He gave me a ten-day draft on Rappal, Sons & Co., signed Rappal, Sons & Co., for $19,505.62.

Q. And that draft went to protest?

285 A. It went to protest for non-acceptance and non-payment.

Q. Did you get two drafts?

A. I was given a further draft, at ten days, for $3,200 odd, which likewise went to protest in both cases, and then he gave me a note for $3,000 at sixty days, which was never paid.

Q. If Mr. Rappal in his conversation with you, after you received advice as to these three drafts not being paid, made any claim or pretense that they should not have been paid out of the shipments of cattle, state what such objection or pretense was.

A. He never made any. Mr. Rappal had given me to understand that he was at the head of the shipping business at Kansas City.

Q. And that the drafts would be paid?

(By Mr. BROWN: Objected to as leading.)

A. Yes, sir.

Q. If he made any claim that each one of those drafts was not all right and should not be paid, state what it was.

A. On the contrary, he made me every assurance that a man could make that they would be paid. He told me that I need not have the least uneasiness about it.

Recross-examination by Mr. MILLER:

Q. These drafts had been already paid to the bank?

A. They took them up, but I had other drafts that were not paid.

Q. A. J. Gillespie & Co. had paid you these drafts?

A. They had given these checks for the drafts.

Q. At the time Mr. Rappal gave you the ten-day draft and

286 the note, &c., at that time these three drafts which had come back from the Union Stock-Yards National Bank had been paid by A. J. Gillespie & Co. by these checks which you put in evidence?

A. These time drafts were given, to the best of my recollection, before the others got back. We were delivering on telegram and drafts in person. Mr. Rappal gave these others, and when those others got back they were taken up, but I can't say they were taken up as you have stated.

Counsel for complainants offer in evidence a check, dated at Kansas City, October 5th, 1885, drawn by A. J. Gillespie & Co., on the Kansas City Stock-Yards Bank for $6,232.75, and the same is marked Exhibit 4 of Mr. Connelly's testimony; also a check, dated at Kansas City, October 6th, 1885, drawn by A. J. Gillespie & Co., on the Kansas City Stock-Yards Bank for $19,505.62, and the same is marked Exhibit 5 of Connelly's testimony; also a check, dated at Kansas

City, October 7th, 1885, drawn by A. J. Gillespie & Co., on the Kansas City Stock-Yards Bank for $696.32, and the same is marked Exhibit 6 of Connelly's testimony.

PETER CONNELLY recalled by complainants.

Examination by Mr. BISBEE:

Q. Mr. Connelly, if you had been notified at any time on Friday, October 2nd, 1885, that the draft for $6,231.10, dated September 30th, 1885, had not been paid, how soon, in the regular course of your business, would you have notified Gillespie & Co. of such fact?

A. Just as soon as I could have got to them.

287 Q. Where is their office with reference to your office?

A. Their office is on the second floor, at the head of the stairs, in the same building.

Q. If you had received such notice should you have discounted for them the draft, dated October 1st, 1885, for $19,505.62?

A. I should not.

Q. Between April and October, 1885, did you discount for A. J. Gillespie & Co. a very large number of drafts drawn on Rappal, Sons & Co., of the Union Stock-Yards, Chicago?

A. Yes, sir. Our business with them commenced about July or, perhaps, the first of August, and between that and the day in October when these payments were refused we received and negotiated quite a large amount.

Q. Some hundreds of thousand dollars?

A. Well, I should think they approximated between one and two hundred thousand dollars.

Q. And all the drafts up to this time had been paid?

A. They had.

Cross-examination by Mr. BROWN:

—. At what time of day upon what day did you discount the draft for $19,505.62?

A. My recollection is that it was October 1st that A. J. Gillespie & Co. got credit for it.

Q. In that case, Mr. Connelly, you are not correct in saying that if you had received notice that the draft for $6,200 odd was refused you would not have discounted the draft for $19,505.62?

A. Yes, sir; that was done, and we were in for it; it was the 1st of October.

288 Redirect examination by Mr. BISBEE:

Q. State the facts in relation to that error in that draft—why it was not mailed October 1st instead of October 2nd.

A. October 1st the draft was drawn for $19,505.62; in figures in the body it was written $12,000; it was discounted for $19,505.62. I discovered the discrepancy in time to hold it on October 1st, and on October 2nd it was drawn properly and sent. In the meantime A. J. Gillespie & Co. had the credit with us, and the cattle were gone, as far as I can see.

Q. Was there time enough on Friday afternoon, if you had heard the first draft had not been paid, to have changed the direction of the cattle covered by the $19,505.62 draft?

A. In regard to that I am not good authority, because I don't know about cattle—as to how they are billed.

Examination by Mr. BISBEE:

Q. State your full name.
A. A. J. Gillespie.
Q. Where do you reside?
A. Kansas City, Missouri.
Q. How long have you resided there?
A. Fifteen or twenty years.
Q. In what business are you engaged?
A. Live stock commission business.
Q. At what point?
A. Kansas City Stock-Yards.
Q. Are you one of the complainants in this cause?
A. Yes, sir.

Q. Do you know the firm of Rappal, Sons & Co., of the
289 Union Stock-Yards, Chicago?

A. Yes, sir.

Q. How long have you known that firm?

A. I think I have known them three or four years; I have known the old gentleman perhaps 20 years.

Q. Whom do you mean by "the old gentleman?"

A. F. J. Rappal, Sr.

Q. Did you make any arrangement with Mr. Rappal, Sr., to do any business for him in behalf of your firm in April, 1885?

A. I think it was in April; I couldn't say what the exact date was.

Q. What was that business arrangement?

A. He came from Chicago here, and came to me and said he wanted to buy and ship some cattle to his house, and he wanted to make arrangements for me to pay for the cattle and forward to them. We made an arrangement; he was to buy the cattle; we were to pay for them and forward them to his house in Chicago. We were to draw sight drafts against the cattle to get our money out of them, and we were to hold the cattle as ours until the drafts were paid.

Q. Did you communicate that arrangement to any person?

A. Yes, sir; I told my two sons about it. Mr. Rappal allowed us 25 cents a head for doing the business.

Q. Was there a change made in the condition of that agreement?

A. Yes, sir; after a month or so; two, perhaps.

290 Q. What was the change?

A. He said he could get it done for $2.50 a car. I told him to go ahead and get it done; that we couldn't do it for any less. He went to Snider's, and he went to the bank about it. Afterwards, one day, he came to me and said he would like to have us do the business for him if I would take it at the same rates. I told him

we would try it again. So he went to buying cattle and marking the tickets for our office, A. J. Gillespie & Co. We kept the cattle in our own name, subject to our orders, and forwarded them to Chicago. We kept an account in a book of each transaction—of every steer we bought. He would come in the evening and look over the list, and we would draw a draft for the balance of the account and ship the cattle.

Q. State how it was with relation to cattle being turned over to you by the parties you paid the money to in all instances.

A. We bought some cattle which were billed through on rates; to protect them all we had to let them go through as they were billed. In those cases we would give a check for the cattle, and the parties we gave the money to would give an order to the stock-yards company in Chicago for whatever the number of cars it might be; then we would write on the bill an order to turn over the cattle to Rappal, Sons & Co.

Q. For what purpose were they turned over to Rappal, Sons & Co.?

291 A. To be sold on commission.

Q. For whose account?

A. If our drafts were paid the cattle would be theirs. As soon as we got our money we had no further interest in them.

Q. And if the drafts were not paid?

A. The property was ours. We would draw a draft for the amount of the indebtedness every night, and in case the drafts were not paid the cattle belonged to us.

Q. Rappal, Sons & Co. rendered you account of sales on each shipment?

A. I think they did.

Q. State how it was about the cattle being subject to your order until they were sold.

A. I made an arrangement with Mr. Rappal that we were to hold the cattle until we got our money.

Q. How was it before they came into the hands of Rappal, Sons & Co.?

A. They were always in our possession. The parties we bought of gave us orders on the stock-yards here or in Chicago, but as a rule on the stock-yards company here.

Q. So that the transportation company, while they were in transit, — subject to your directions?

A. Yes, sir; all the time they were really our cattle; we had control and possession of them.

Q. Now, does the account that has been put in evidence and the account appearing upon your ledger show the history of the transactions had under that arrangement with Mr. Rappal by yourself?

292 A. It does, sir.

Q. State why that account was kept in the name of Bowen & Co. Who directed it to be done?

A. Mr. Rappal said he didn't want the commission men to know he was shipping cattle, and that he had a man by the name of Bowen

with him, and he wanted the cattle handled in that name to keep it separate and to keep people from knowing that Rappal, Sons & Co. were shipping cattle.

Q. What were his directions?

A. To keep the account "Account of Bowen & Co.," but it was his account.

Q. What do you know about any one being interested in the transaction excepting F. J. Rappal, Sr.?

A. I don't know whose the interest was; our business was at his orders—Mr. Rappal's orders—to ship the cattle to Rappal, Sons & Co.

Q. What do you know of the interest of Mr. Bowen or Mr. James?

A. I don't know anything about their interest.

Q. Did either of them have any interest in the business?

A. I don't know.

Q. What did Mr. James have to do with it?

A. I don't know. Neither James nor Bowen had anything to do with the business, so far as we were concerned.

Q. Did Mr. Connelly, cashier of the Kansas City Stock-Yards Bank, show you a letter that he had received from Mr. Conrad, cashier of the Union Stock-Yards National Bank, Chicago,
293 with reference to the firm of Rappal, Sons & Co.—concerning their responsibility?

A. He did, sir.

Q. What influence did that letter have upon you in doing business for that firm, the firm of Rappal, Sons & Co.?

A. I made up my mind that I would take no more of Rapple's drafts, and I went to Mr. Connelly's and told him so. He said, "What is the matter?" I told him he could have the business if he wanted it. He asked why? I said I was afraid of it. He said I needn't be afraid, and then he showed me a letter Mr. Conrad had written to the bank with reference to the responsibility of Rappal, Sons & Co.

Q. Was it the same letter Mr. Connelly put in evidence yesterday?

A. Yes, sir. He said, furthermore, "I have made arrangements with the bank to telegraph me when a draft is not paid. You need not fear; you can change the consignment of the cattle if the drafts are not paid. The drafts come through ahead of the cattle—one day ahead of the cattle." Then I went on taking the drafts and doing the business for Rappal, and continued to do so to October, 1885, the same as we had before until the drafts were protested.

Q. Do you recollect of a shipment of cattle under this arrangement, of 133 head shipped September 30, 1885, upon which shipment you drew a draft for $6,231.10 on that day?

A. Yes, sir.

294 Q. That would be on Wednesday. Now, when would that draft, in the natural course of the mails, reach the Union Stock-Yards at Chicago?

A. It would reach there the next day at 2 o'clock, Thursday, October 1st.

Q. Now, then, when, in your opinion, would it reach the stock-yards?

A. I say it would reach Chicago at 2 o'clock p. m., ordinary time. I couldn't say exactly, but I should think it would reach the stock-yards an hour afterwards.

Q. When would this 133 head of cattle, or when did they, reach the Union Stock-Yards, Chicago?

A. They should reach there Saturday morning; leaving here Wednesday, they would get in on Friday, ordinarily.

Q. Now, that draft appears to have been protested on Friday, October 2. When did you receive any notice of that draft going to protest?

A. It was Monday, the 5th of October.

Q. Now, do you recollect of shipping 815 head of cattle on Thursday, October 1st, 1885?

A. Yes, sir.

Q. Do you remember of drawing a draft on that day for $19,505.62 on Rappal, Sons & Co. on account of that shipment?

A. Yes, sir.

Q. Now, Mr. Gillespie, if you had got word that that draft for sixty-two hundred and odd dollars had not been paid on Friday, what could and what would you have done with relation to the 815 head of cattle shipped on Thursday?

(By Mr. BROWN: Objected to.)

295 A. I would have telegraphed to the stock-yards at Chicago to turn them over to some other house.

Q. Were these 815 cattle under your control while in transit?

A. Yes, sir.

Q. And while in the stock-yards at Chicago were they subject to your orders?

A. Yes, sir; they were subject to our order after we had paid for them.

Q. If you had received notice up to Saturday morning the first draft had not been paid what would you have done with relation to the 815 head of cattle?

A. It would have changed the consignment up to 8 o'clock Saturday morning. The stock-yards company would have changed it at any time up to that time.

Q. Assuming that the draft for $19,505.62 left here on Thursday, Oct. 2, when would that have reached Chicago or the Union Stock-Yards in the ordinary course of the mails?

A. It would have reached Chicago the next day at 2 o'clock in the afternoon, and it ought to have reached the stock-yards an hour later, or 3 o'clock.

Q. Can you state when you got notice that the draft was not paid; was it on the 5th?

A. It was 1 or 2 o'clock in the afternoon, on Monday, 5th.

Q. Was that by telegraph?

A. Yes, sir; by telegraph to the bank.

296 Q. And the cattle were sold on the Saturday previous?

A. Yes, sir; they were sold on Saturday, as the account of sale shows.

Q. Have your firm ever received the proceeds of the sale of either of the two lots of cattle?

A. They have not.

Q. Have you from the lot of cattle shipped on Saturday, the 3rd of October, 1885?

A. No, sir; we have not.

Q. State how it was with relation to the three lots of cattle shipped September 30, October 1, and October 3, 1885, with reference to the three lots of cattle being under the control of your firm up to the time they were sold.

A. They were under our control from the time we paid for them; when we paid for them we got an order for the cattle, and after that they were under our control, if the drafts had been paid; that was all the interest we had in the cattle; but until they were paid for they were in our possession and under our control.

Q. That was the arrangement you made with Mr. Rappal?

A. Yes, sir; that was always the way.

Q. Is that the fact with relation to these three bunches of cattle in question?

A. Yes, sir.

Q. Up to the time that this six hundred and odd dollar draft went to protest had any other draft drawn by your firm been refused payment by Rappal, Sons & Co.?

297 A. They had all been paid before that.

Q. How long does it take the Kansas City Stock-Yards Bank to notify your firm of the non-payment of any draft?

A. A few minutes—from 3 to 5 minutes.

Q. Your office is in the same building?

A. Our office is in the same building with the bank, and they are very prompt to notify us.

Q. Was you in Kansas City, at your office, on Tuesday, the 6th day of October, 1885?

A. I was.

Q. Do you remember of this $19,505 draft coming back to the bank in Kansas City and being presented to you to be taken up?

A. Yes, sir.

Q. Do you remember what time of day it was?

A. I couldn't say exactly; it was in the afternoon.

Q. Did you take the draft from the bank?

A. Yes, sir; I took it and gave a check for the whole amount.

Q. When would that draft have had to be mailed from Chicago to have reached you on Tuesday?

A. It would have had to leave Chicago on the 12:30 train on Monday, and it would have had to have been mailed in Chicago an hour earlier to be here on the 6th.

Q. Did you see Mr. Rappal in Kansas City after you had been advised of the non-payment of these three drafts in question?

A. Yes, sir; I did.

Q. State what conversation you had with him.

298 A. As soon as Mr. Connelly came to me and showed me the telegram, saying that the drafts were protested, I told him we would go to Mr. Rappal at once and notify him. We went to him, and he seemed very sorry about it, and said he could arrange to pay it in a few days. He said he would give us a ten-day draft and go home that night and arrange with Mr. Washburn to carry it for him.

Q. What was done?

A. He gave us a ten-day sight draft for the amount of the draft protested.

Q. For $19,505.10?

A. Yes, sir.

Q. What did he do about the sixty-two hundred and odd dollar draft?

A. He gave us a note for $3,000 and a draft for $3,200, both by Rappal, Sons & Co.

Q. Has the note or drafts ever been paid?

A. No, sir; neither one.

Q. Did Rappal, Sons & Co. have anything to pay with after that?

A. Not that I know of.

Q. What was the financial condition of W. P. Bowen?

A. He had nothing.

Q. Neither then nor now?

A. Neither then nor now.

Q. How long was it after the ten-day draft was given before you went to Chicago?

A. I think it was about ten days afterwards. I guess I didn't go until they were refused.

Q. What did you do?

A. I went to Chicago.

299 Q. Did you have any conversation with the Rappals?

A. Yes, sir.

Q. What did they tell you?

A. They said they had lost money, and that the bank refused to carry them any further, and that they couldn't pay.

Q. Did you notify Mr. Conrad or Mr. Washburn, of the Union Stock-Yards National Bank, with reference to the money that had been deposited there?

A. Yes, sir; I notified them that that was our money, and that I was going to bring suit.

Q. Did you serve them with a written notice?

A. Yes, sir; counsel did.

Q. The complaint is set out in full?

A. It is set out in full.

Q. Have you ever received the money which you paid out for this 133 head of cattle and 815 head of cattle and 121 head of cattle shipped on the 30th of September, the 1st of October, and the 3rd of October, from any source?

A. I have not received a dollar from any of them.

Q. You have heard the testimony given by your son, T. E. Gil-

lespie, in relation to how the account—the Bowen account—stands on your books, and are you familiar with it?

A. Yes, sir.

Q. State whether the balance he gave as being due, the $24,000 and odd, is correct?

300 A. Yes, sir.

Q. And do you hold nothing as security for that excepting the papers that you have testified about, and are those absolutely worthless?

A. Yes, sir.

Cross-examination by Mr. BROWN:

Q. When this $19,000 draft was drawn by you it was discounted by you at the bank?

A. We sold it as exchange to the bank.

Q. And the amount was placed to the credit of A. J. Gillespie at that bank?

A. That is right.

Q. If, upon the 5th of October, in the afternoon, the Kansas City Stock-Yards Bank received notice that that draft was protested, and further notice from the Union Stock-Yards National Bank that it would not be paid; that the drawee said they held the proceeds of the cattle for another account, and that they had nothing to pay with, would not the Kansas City Stock-Yards Bank request of you your check for that $19,000 at once, without waiting for the draft to get back?

A. No; they didn't ask for a check until the draft was returned.

Q. Are you perfectly certain that you didn't give your check to the Kansas City Stock-Yards Bank for that $19,000 before that draft was handed to you?

A. I feel very confident that I gave my check for the draft.

Q. Are you perfectly sure you didn't give your check upon

301 the 6th and get the draft upon the 7th; do you remember Mr. Connelly's testifying that he was doing this business upon telegrams he received?

A. No, sir.

Q. What did he say?

A. He said he got the draft from Rappals on the 5th—before we took it up on the 5th.

Q. You gave that draft of Rappals to the bank?

A. Yes, sir.

Q. You gave to the bank the draft at the same time you gave the check, did you not?

A. No, sir.

Q. Are you positive?

A. Yes; I am positive we gave the draft on the evening of the 5th.

Cross-examination by Mr. MILLER:

Q. Mr. Gillespie, about when was it in April, 1885, you had your first conversation with F. J. Rappal, Sr., in relation to the shipment of cattle from Kansas City through your firm?

A. I couldn't give the dates; it was in April, I think.

Q. Did you request Mr. Rappal to ship through you, or did he request that you do the business for him?

A. He came to me and said he wanted me to do the business for him; he said he thought he could make some money that way.

Q. Is it not the fact that you solicited doing this business for him or Bowen & Co.?

A. He came to me and said he wanted me to do the business for him.

302 Q. You didn't ask him for the privilege of doing the business?

A. No, sir; never.

Q. What did Mr. Rappal say? I desire you should give the words of Mr. Rappal as correctly as you can.

A. He said he wanted to buy and ship cattle to Chicago; that he thought he could make some money; he said he didn't want the commission houses in Chicago to know that he was speculating, and that he wanted to do it through Bowen, a man who was working for him; he wanted to know how we would do the business, and we made arrangements that he was to give us 25 cents a head; we were to pay for the cattle and hold them in our possession till we got our money back.

Q. Will you swear that Mr. Rappal asked you or said to you that these cattle which were bought by himself or by Bowen & Co. and shipped through your house should be your cattle until the drafts for the costs of the cattle were paid in Chicago? Did he say that to you?

A. Yes, sir.

Q. When and where?

A. At the stock-yards, in April. I couldn't give the date.

Q. Did you have any other conversation with him?

A. Nothing; any more than I told him we would do their shipping business, and we wanted to keep ourselves safe.

Q. Is it not a fact that this idea which you have advanced in your testimony under the name of "arrangement" with Mr.

303 Rappal is a matter that you have thought of recently and not a matter that was in the nature of a contract between you and Mr. Rappal in April, 1885, or any time prior to October 5th, 1885?

A. It is a fact that he made the arrangement as I have told you.

Q. At that time?

A. Yes, sir.

Q. Do you recollect of coming to Chicago in October, 1885?

A. Yes, sir.

Q. Do you recollect of going to the Palmer House and meeting Mr. Rappal there?

A. Yes, sir.

Q. Who were there that day; what date was it?

A. I think it was in October.

Q. About what time?

A. It must have been about the middle of October. The way I remember is that after the ten-day draft was protested I went to Chicago to see about it.

Q. Do you recollect an interview at the Palmer House, at which F. J. Rappal, Sr., F. J. Rappal, Jr., and Lawrence Rappal were present?

A. Yes, sir.

Q. Was Mr. Bisbee there during all the interview?

A. I couldn't say whether he was there all the time or not; we were all there together.

Q. Do you recollect of sitting in the rotunda of the Palmer House, near the parlor, in conversation with Frederick Rappal, Sr., and Fred. Rappal, Jr., and Lawrence Rappal alone, Mr. Bisbee not being present?

304 A. I am not sure whether he was there or not.

Q. Do you recollect of seeing me there?

A. I didn't know you; no, sir.

Q. Is it not a fact that in the conversation you had there in the presence of Lawrence Rappal or Fred. Rappal, or both, that you said to Mr. Fred. Rappal, Sr., that if he would say that these cattle were yours and help you to get your money out of the Union Stock-Yards National Bank you would stand the loss on those cattle?

A. There was never any such talk.

Q. Do you swear that?

A. Yes, sir.

Q. Do you recollect of me going to you, and being introduced to you by Mr. Rappal, Sr., in the presence of his two sons, and asking you if you had made Frederick Rappal, Sr., the proposition which I have asked you if you made to him, and your saying yes; do you recollect that?

A. Well, I don't recollect of seeing you or having any conversation with you at all.

Q. You have said in your direct examination that your firm drew each day on Rappal, Sons & Co. a draft for the full amount of the cost of the cattle shipped that day; was that your invariable custom?

A. Yes, sir; sometimes there would be a few more cattle than would go into the cars, and we would have to leave out a few, and in that case we didn't balance the account that night.

Q. They were a balance due from Rappals to you?

305 A. If it was only a steer or two, if there were as many as 9 cattle left we would hold those cattle as we did the rest—in our own name and control.

Q. Were you in Kansas City at the time the 133 head of cattle were bought?

A. Yes, sir.

Q. Do you know who bought those cattle in the stock-yards?

A. No; I do not, positively.
Q. Do you know who bought the 815 head of cattle?
A. No; I couldn't say.
Q. Who bought the 121 head?
A. I don't know. When the tickets came to our office we kept on the track of the cattle until we paid for them, and then we kept on the track of the cattle until they were shipped and paid for to us, and then we didn't know anything more about them.
Q. Did Mr. Bowen buy any of these cattle that were shipped by you on account of Bowen & Co.?
A. I think he and Mr. Bowen bought all of them. I don't know how much each one bought.
Q. You have spoken of a note that Mr. Rappal, Sr., gave you at the time he gave the draft to make up the amount of the six thousand and odd dollar draft. Whose note was that?
A. Mr. Bowen's.
Q. Secured by what?
A. Second mortgage on some property.
Q. How did he get that note and mortgage?
A. Bowen gave it to him. He said Bowen was getting behind in the shipments and he wanted to get some collateral as security,
306 and I believe Mr. Bowen gave him a second mortgage.
Q. Did you see Mr. Bowen and Mr. Rappal together frequently?
A. Every day.
Q. Do you know what hour the Union Stock-Yards Bank, at Chicago, closed at?
A. No, I don't; our bank closes here when it gets its business done.
Q. You don't know what the custom is in Chicago?
A. No, sir.
Q. When did you first learn the balance that was due (as you claim) from Rappal, Sons & Co. to A. J. Gillespie & Co., on account of your dealings with them; when did you know the amount that was due?
A. When the drafts were returned the amount was figured up.
Q. When was that, in the early part of October?
A. The drafts show for themselves.
Q. Before you came to Chicago did Mr. Rappal know what the balance was?
A. Yes, sir.
Q. Do you recollect that paper? (This is a telegram dated October 12, 1885, addressed to Rappal, Sons & Co., and reads as follows: "If you will pay $15,000, will give you clean receipt. Answer. A. J. Gillespie." Introduced in evidence marked Exhibit 1 of A. J. Gillespie's testimony.) And you had no conversation with Mr. Rappal with reference to this matter after he left Chicago, on the 6th or 7th of October, and before the time you sent this telegram?
A. I think that is what I referred to.

307 Q. Then there was no talk about a compromise?
A. No, sir; I didn't want to go up there or to bring this suit.
Q. You offered to throw off $9,000?
A. Yes; I tried hard to get a settlement rather than to bring this suit.

Re-examination by Mr. BISBEE:

Q. I omitted by accident to ask you this question in your direct examination—and that is, state why the accounts of sales rendered by Rappal, Sons & Co., in Chicago, to A. J. Gillespie & Co., in Kansas City, had on them the words "account Bowen," if you know.
A. I can explain that in this way: We were shipping different lots of cattle to Rappal, Sons & Co., and they had to keep them separate up there by some designation, and we kept it "Bowen & Co.," and I suppose they kept it there in the same way.
Q. Did it have any other signification than that you have explained?
A. None with us.
Q. It enabled you to keep your Bowen account correctly?
A. Yes, sir; from other accounts—the same as we kept other accounts separate.
Q. Is that a common way of doing business?
A. Yes, sir; we kept every man's account with somebody.
Q. In relation to the telegram that has just been shown you by Mr. Miller, did that have any other significance than a desire to compromise and avoid the expense of litigation?
308 A. That is all; I thought perhaps the expense would cost that much.

Examination by Mr. BISBEE:

Q. State your name.
A. Milton James.
Q. Where do you reside?
A. Kansas City.
Q. In what business are you engaged?
A. Stock business.
Q. How long have you been engaged in the stock business in Kansas City?
A. 10 years.
Q. Do you know F. J. Rappal, Sr., of Chicago?
A. Yes, sir.
Q. Do you know W. P. Bowen, of Kansas City or Paola, Kansas?
A. Yes, sir.
Q. Did you know those two men from April to October, 1885?
A. Yes, sir.
Q. Were you a member of the firm of Bowen & Co.?
A. No, sir; I was not.
Q. Now, you may state whether there was any such firm to your knowledge.

A. There was no such firm, to my knowledge, so far as I was concerned.

Q. You may state if you had any interest at any time with Mr. Rappal and Mr. Bowen in any particular lots of cattle; and, if so, the nature of it.

A. Yes, sir.

Q. State what it was.

A. At different times we bought cattle which I would have
309 an interest in, and we would settle *um* when the return would come from the cattle I had an interest in.

Q. Did you have any interest in a bunch of cattle, being 133 head, which was shipped by A. J. Gillespie & Co. on the 30th day of September, 1885, to Rappal, Sons & Co. at Chicago?

A. Yes, sir.

Q. Did you have an interest in 815 head of cattle that were shipped by A. J. Gillespie & Co., of the Kansas City stock-yards, to Chicago on the 1st day of October, 1885?

A. Yes, sir.

Q. Did you have an interest in 122 head of cattle that were shipped by A. J. Gillespie & Co. on the 3rd of October, 1885, to Chicago?

A. Yes; I think those are the dates, as far as I can remember.

Q. Now, *now* who paid for those cattle after the drafts were all made?

A. A. J. Gillespie & Co.

Q. And who had possession and control of those cattle from the time that A. J. Gillespie & Co. paid for them until they were sold in Chicago?

A. A. J. Gillespie & Co. should have charge of them, I should think.

Q. With relation to doing the business, what was the understanding with you and your co-owners as to A. J. Gillespie & Co. having control of the cattle until their drafts were paid?

A. They were to pay for them, and when paid for the cattle were under their control till the drafts were paid.

310 Q. What is the custom in the stock-yards at Kansas City with relation to getting notice of drafts that were presented there, drawn against a consignment of cattle which were not paid?

A. In the usual way; the bank telegraphs as soon as a draft is presented and not paid.

Q. In the event that this 815 head of cattle, shipped October 1st, 1885, reached Chicago on Saturday morning and the draft was presented on Friday, the 2nd of October, previous, if notice had been given of the non-payment of the draft, couldn't the consignment of the cattle have been changed?

A. Yes; it could have been changed by telegraph and the cattle could have been turned over to somebody else.

Cross-examination by Mr. MILLER:

Q. Mr. James, in whose employ are you now?

A. A. J. Gillespie & Co.

Q. How long have you been in their employ?

A. Almost three years—two years and a half.

Q. You have stated that there is no such firm as Bowen & Co. what do you mean?

A. I mean as far as I know; I am not a member.

Q. Have you any interest in which Mr. Bowen and Mr. Rappal are interested with you?

A. Yes, sir.

Q. What interest was that?

A. I had one-third interest in whatever the cattle would make or loose.

Examination by Mr. BISBEE:

Q. State your name.

A. John F. Gillespie.

311 Q. Are you a son of A. J. Gillespie?

A. Yes, sir.

Q. Are you employed by the firm of A. J. Gillespie & Co.?

A. Yes, sir.

Q. Were you in their employ in 1885?

A. Yes, sir.

Q. I want to show you a check which is marked on the back "Exhibit 5, Connelly's testimony," dated October 6, 1885, signed by A. J. Gillespie & Co., for $19,505.62, and ask you who wrote that check.

A. I wrote the check, but did not sign it.

Q. For what did you draw that check?

A. For a draft protested and returned.

Q. I now show you a draft drawn October 6, 1885, by A. J. Gillespie & Co. on Rappal, Sons & Co. for $19,505.62. This draft is marked Exhibit E, and I want you to state if that is the draft that you drew that check to take up.

A. It is the same.

Q. When did you get possession of that identical draft marked Exhibit E?

A. I got possession of it at the same time I gave this check.

Q. And the check was drawn the day it bears date?

A. Yes, sir.

Cross-examination by Mr. BROWN:

Q. You got notice before you got this draft that it was refused and protested?

A. We got notice on Monday, the 5th, that it was protested on Monday and refused.

Q. Are you sure you didn't give a check for the amount of

312 the discount, which was placed to your credit before this draft was returned, and receive the check afterwards?

A. Yes, sir; I received the draft at the time I received the check.

I, Edward W. Taylor, do hereby certify that in pursuance of within commission, on notice, came before me at my office, in the city of Kansas, in the county and State last aforesaid, T. E. Gillespie, Peter

Connelly, A. J. Gillespie, John F. Gillespie, and Milton James, who were by me severally sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined and their examination reduced to writing in my presence, on the day, between the hours, and at the place in that behalf first aforesaid, and their said depositions are now herewith returned.

Given at the city of Kansas, in county of Jackson and State of Missouri, this 16th day of Oct., 1886.

[SEAL.] EDWARD W. TAYLOR,
Notary Public, Jackson Co., Mo.

313 NOVEMBER 30TH, 1886.

CHARLES JAMESON, being first duly sworn, testified on behalf of defendants as follows:

By Mr. BROWN: State your name.

A. Charles Jameson.

Q. What is your business?

A. Assistant cashier of the Union Stock-Yards National Bank.

Q. How long have you been so?

A. Six years last June, I think.

Q. What are your duties as assistant cashier of the Union Stock-Yards National Bank?

A. Well, everything.

Q. General utility man?

A. Yes, sir.

Q. Among your duties, what have you to do with the mail which is received by the bank?

A. I open the mail.

Q. You open the mail directed to the Stock-Yards Bank?

A. Yes, sir.

Q. When that mail contains drafts or paper for collection what is the usual course of business?

A. Perhaps I had better tell it in my own way. At 8 o'clock, when I get there in the morning, there is usually a large
314 mail just come in and I open it and distribute it for the different desks that it belongs to. Some matters of importance I pass over to the cashier's desk. That to the general ledger goes to general book-keeper; collections go to the collection teller. I open and check everything. About 11 o'clock another one comes, and then, about half past 11, our messenger comes up from down-town with a big lot, and I open them all, check them, and distribute them.

Q. What time does the last mail arrive?

A. Sometimes it don't come till about 3 o'clock in the afternoon—about 3—sometimes a little after, sometimes a little before.

Q. Have you been in the habit of receiving many letters at the bank from Kansas City, Missouri?

A. Yes, sir; almost every day, I think, ever since I have been there.

Q. Do you know what the course of mail is betwern Kansas City and the Union Stock-Yards? When do you receive your mail?

A. It is my recollection that it is usually received the second day.

Q. You mean that a letter dated to-day, for instance, the 30th of November, would be received upon what day at the yards?

A. On the 2nd of December. I shouldn't expect our letters to get there any sooner. Our letters don't get away from the bank in time for anything except the late mails—any of them. There is no collection there until afternoon.

315 Q. I mean the time the Kansas City mail reached Chicago; do you know that?

A. No, sir; I couldn't state, only just from its coming up to us.

Q. Are you a notary?

A. Yes, sir; I am.

Q. Do you act as a notary for the Union Stock-Yards National Bank?

A. Usually.

Q. What is your duty as such notary?

A. Protest all drafts unpaid unless protest may be waived.

Q. Do you remember a draft which I hand you, marked Exhibit D, for $6,231.10?

A. It is my mark on it.

Q. Do you know when you received that draft as assistant cashier of the bank?

A. I received it the day it was protested.

Q. What date was that?

A. On the 2nd day of October, 1885.

Q. What time on that day did you get that?

A. Couldn't state that.

Q. When did you protest it?

A. I protested it that evening.

Q. What did you do with it after protest?

A. Took it out next morning to see what was to be done about it, and I saw F. J. Rappal, Jr.

Q. Saturday morning?

A. Yes, sir; he said send it back and I injected that portion. I put that on there so I would know who I had seen; that is a custom we have had for our own protection.

316 Q. You took it out, you say, upon Saturday, the 3rd of October?

A. Yes, sir; either this or a memorandum; usually take a half dozen of them; take a memorandum of them all, and go around and see them all—different ones.

Q. What did you do with it after that?

A. Copied it in my book and gave it to the collection teller to return.

Q. Does your book show the protest of it on October 2nd?

A. Yes, sir.

Q. It is the third one under date of October 2nd, is it?

A. Yes, sir.

Q. And you say that you have in your register of protests which

you are obliged to keep by the law, I believe, under date of October 2nd, being the third one upon that day, the memorandum of the protest of this draft, marked Exhibit D?

A. Yes, sir.

Q. Did you ever see the draft which I now show you, marked Exhibit E?

A. I have.

Q. When did you see it first?

A. I saw that on the 5th of October.

Q. How did you see it?

A. I opened the mail that that was in.

Q. When?

A. On that day.

Q. Morning of October 5th?

A. Yes, sir.

317 Q. What did you do with that draft upon receiving it?

A. Opened it as usual and passed it over to the collection teller.

Q. When was the letter in which it was contained received at your bank?

A. I found it on my desk that Monday morning when I went there.

Q. Was it with other bundle- of letters on your desk?

A. Yes, sir; I have a pile that high.

Q. Did it seem to be one of part of that bundle?

A. I knew nothing out of the way; never thought or heard anything about it until after I found it was not to be paid; never knew there was anything out of the usual course.

Q. You say you handed it to the collection teller?

A. Yes, sir; I leave them on my——

Q. When did you next see it?

A. I don't know whether I saw it in the intervening time, but I saw it after the close of business.

Q. On October 5th?

A. Yes, sir.

Q. What did you do with it then?

A. Kept it over night; investigated next morning to see whether it would be paid or not; then copied it on here and returned it; don't think this could be till next day.

Q. And you don't return the draft until you have made a copy?

A. No, sir.

318 Q. The copy is made an exact copy of the original paper, is it not?

A. I try to draw it so.

Q. And what did you do with it upon the 6th of October?

A. Passed it over to the collection teller to return.

Q. Have you the record of your register of the protest of this draft?

A. There it is, $19,505.62.

Q. Then you have in your protest register, required to be kept by law, as the 4th item under date of October 5th, the memorandum

or record of the protest of this draft or record of the protest of this draft, have you?

A. I have.

Q. I mean the fourth piece of paper of which you have a record of protest?

A. Yes, sir; that is what I mean.

Q. Then you didn't give this draft of 19 thousand and odd dollars to the collection teller to be returned until the 6th of October?

A. Oh, no.

Q. Do you remember this draft, marked Exhibit F, for $691.70?

A. Yes, sir.

Q. When did you receive that draft, if you did receive it?

A. The same day.

Q. Upon what day was that?

A. On the 5th.

Q. October 5th, 1885?

A. Yes, sir.

Q. And what did you do with it?

319 A. It went through the same course as —. I judge from the order that it is on the collection teller's book; that it came in in a later mail.

Q. Did you protest that draft?

A. So I see.

Q. What did you do with it after protest?

A. Passed them both back at the same time to the collection teller to return.

Q. Upon October 6th, 1885?

A. Yes, sir.

Q. Have you a record of the protest of that draft?

A. There it is, 2538.

Q. 2538 of your——

A. The third draft protested that day.

It is stipulated that the defendants, upon the trial of this cause, may use the original protest record kept by the witness, and it is understood that the book may not be left as an exhibit, and that the same may not be copied into the record.

Q. There have been certain letters put in evidence here, or copies of such letters, by Mr. Caldwell, collection teller, some letters in which erasures are made, and concerning which he says that an item was cut out—those letters signed by Mr. Conrad, cashier. I will ask you what is the usual routine method concerning the signature of such letters and the cutting out of the items—which takes place first, and what is the course through which those letters go?

A. As I said before, the mail gets there about 8 o'clock. I

320 get there about the same time. After opening the vault I open the mail first thing, and about 9 o'clock the collection teller gets his. He enters them on his ledger and then immediately writes his letters. Sometimes he gets them before the 11 o'clock mail comes; sometimes he don't. Then the 11 o'clock mail comes; he puts them upon his register; then the half past 11 messenger comes up with a large bundle

of drafts, and he gets the drafts ready so they can be taken out as soon as possible, and I have the man take those drafts out; made that change myself a year or two ago. In writing the letter for every draft that he has and proving every letter to see that he has the right ones, it keeps him till probably one or half past one, some days later than that, before he gets through. Then the letters are taken to the cashier and signed.

Q. Before any items are cut out?

A. Yes, sir; then comes the question of payment from the men. These drafts have been—ever since I have been in the bank, 13 or 14 years—have been left in the offices, 13 Exchange building—all that belong there. The drafts are left in each office in the same building, and the clerk comes about 1 or 2 o'clock, and they keep it up till after 3, bringing in a batch of drafts with a check paying for all of them, or those that are not going to be paid are not
321 included in the check. They are brought back to the collection teller, and about half past 3 he goes to work checking immediately; as a usual thing, he foots up what is paid and what is not; then the cutting out commences.

Q. By whom?

A. By the collection teller.

Q. The cutting out from the letters?

A. From the letters. In the mean time they have been sent to the cashier, so he is through with them.

Q. Then, does the cashier see the letters after the cutting out has taken place?

A. No, sir; don't see them at all.

Q. Or you?

A. Sometimes I do, because I go around and sometimes help him out.

Q. Always do so?

A. No.

Q. Is it the general course of your business to do so?

A. No, sir; I don't usually trouble anybody if they are getting along all right.

Q. Then, if upon Friday, October 2nd, the cashier had signed a letter to the Kansas City Bank containing the statement that various items were paid or the proceeds remitted for their account and at their direction, and afterwards any particular item that was cut out of that he would not know of that upon that day, would he?

A. Wouldn't know anything about it unless some one told him.

322 Q. Nor would you, as a general rule?

A. As a general rule, I wouldn't. Occasionally the teller gets in trouble, his books won't balance, and as soon as I get through I help him out.

Q. There was put in evidence, in Kansas City, I think, by Mr. Connelly, a telegram, dated 10, 5, '85, meaning, I suppose, October 5th, 1885, Monday, which reads: "P. Connelly, assistant cashier: Rappal, Sons & Company's $19,000 not paid. Jameson, assistant cashier." Do you remember sending that telegram?

A. I have no recollection of it.

Q. Isn't it probable that you sent such a telegram?

A. Oh, yes; anything of that kind comes up. Mr. Conrad, as I said, signs them, as a rule, but if he is not there I sign them.

Q. If you don't remember sending the telegram, then you don't remember at what time you sent it?

A. No, sir.

Q. Mr. Connelly says it ought to be received at Kansas City at 2 p. m., Monday; does that refresh your recollection?

A. No, sir; have no recollection whatever; have no doubt if I signed one it was done before noon. because I have made it a point. I have a little spare time to find out about these protested drafts and this was taken on Monday. I don't know what time in
323 the day I knew it that the draft wouldn't be paid. The boys were a little sore on account of getting that on Saturday, and I expect he brought it to me; but I have no recollection of it. Mr. Conrad was a little ruffed with him on Saturday.

Q. Mr. Conrad was a little bit ruffed with Mr. Caldwell on Saturday?

A. Yes, sir.

Q. For not having telegraphed that draft on Friday?

A. I presume that was the reason; I signed that telegram. I don't recollect signing it. If it has gone in signed by me I have no doubt I did.

Q. Was anything, so far as you know as assistant cashier of that bank or any other capacity, or notary, unusual or not, according to custom, in the way these drafts were received, presented, and notified?

A. Never knew of anything unusual until Saturday forenoon, and I think the first I knew then that this dispatch had not been sent on the $6,000 draft.

Q. Anything else?

A. I think the first notice I had of that, Mr. Conrad was going for Mr. Caldwell a little.

Q. Except that non-notification of the non-payment?

A. With the exception of that I knew nothing out of the usual course.

Q. Did you ever know or hear, as an officer of that bank, of any plan, scheme, intimation of any kind, in which the condition
324 of Rappal, Sons & Company was to be concealed from any person by the bank?

A. I have no knowledge—no suspicion of any trouble with them until Monday.

Q. Anything out of the regular course until Monday?

A. Until Monday; some time during the day.

Q. Did you ever hear of anything that looked like any conspiracy or scheme or plan of any sort to conceal anything respecting Rappal, Sons & Company from any person?

A. No, sir.

Q. Or to secure any funds from the Rappals not belonging to them from the bank?

A. I never heard of anything or saw anything.

Q. Do you know the volume of collections which you receive on sight drafts and notes on the average at the Union Stock-Yards National Bank?

A. No.

Q. Can you give approximately anything like it?

A. I should think they would amount to 150 or 200 pieces.

Q. 150 or 200 pieces for collection a day?

A. I should think so.

Q. Do you know anything about the volume—I mean the amount?

A. No; I couldn't say.

Q. The average?

A. That would vary very much; couldn't say; used to run through, but it is too slow work; little amounts.

325 Cross-examination by Mr. BISBEE:

Q. When did you first know that the draft for $5,231.10, Exhibit D, was not paid?

A. I had it in my clip over night.

By Mr. BROWN: I will ask you how long have you been in the banking business?

A. I have been in the banking business 17 or 18 years.

Q. How long have you been connected with the Union Stock-Yards National Bank?

A. 13 years ago last June.

Q. I will ask you, as a bank officer, and from your knowledge of banking, whether the non-payment upon presentation of a sight draft upon a person is supposed by banks to convey any knowledge or information of their financial condition of the person upon whom it is presented.

A. Couldn't say as to that; generally, with us, we have a great many commission men who won't pay a draft until stock arrives; the consequence is that some months my business is very brisk—8 or 10, sometimes 12, a day.

Q. Do you consider the non-payment——

A. Frequently they pay the next morning.

Q. Do you consider the non-payment or non-acceptance of a sight draft sent to you for collection, concerning which you know nothing more than it is sent for collection, any indication of the financial condition of the drawee?

326 A. Take it as a mere matter of course. If a man don't want to pay his drafts he is——

Q. May have a good many reasons for it, may he not?

A. Yes, sir; we have quite a number of commission men who won't under any circumstances pay a draft until the stock arrives.

Cross-examination resumed by Mr. BISBEE:

Q. It is usual, isn't it—drafts are drawn against assignment of stock?

A. Greater proportion we have.

Q. Nearly all of them are so drawn?
A. Yes, sir.
Q. It is presumable, is it not, that when a draft comes in against a commission merchant, drawn from out of town on a commission merchant, that there is a shipment of stock connected with it?
A. We know nothing about shipments unless bills of lading are attached.
Q. Isn't it a matter of fact that usually when a draft is drawn on a commission merchant it has relation to a shipment of stock?
A. I presume so.
Q. That has been your experience ever since you have been at the stock-yards?
A. Yes, sir.
Q. Now, then, you say that you had this draft of $6,231.10 on your spindle over night—that is, you got it Friday night,
327 October 2nd, didn't you?
A. October 2nd; yes, sir.
Q. And you protested it Friday afternoon?
A. Yes, sir; I see that is dated——
Q. And you held it——
A. Until the next morning.
Q. When you entered it up in your protest register?
A. Yes, sir; previous to entering it I presented it at Rappals' office, or a memorandum of it, and they refused to pay it.
Q. When did you do that, Friday or Saturday?
A. Saturday morning.
Q. It was presented on Friday by the collection teller?
A. Yes, sir.
Q. And then you presented it again, or a memorandum of it, on Saturday morning?
A. Yes, sir.
Q. That was after it was actually protested?
A. Yes, sir; it was protested before.
Q. Didn't you know that day, Friday, that the Rappals were about to fail?
A. No, sir.
Q. Didn't know that until Monday?
A. No, sir; I didn't known it Saturday.
Q. Didn't you know it Saturday?
A. No, sir.
Q. Had no suspicion of that fact until Monday?
A. No suspicion of anything out of the usual course.
Q. Until Monday?
A. Until Monday.
328 Q. What time Monday was that?
A. First I knew there was anything wrong, went around there with the big draft.
Q. $19,000 draft?
A. Yes, sir.
Q. And they didn't pay it?
A. They didn't pay it.

Q. And you knew that Monday forenoon, didn't you?

A. I don't know what time of the day it was Monday. I knew some time during the day Monday. I asked Mr. Conrad a question in regard to the Rappals, which he didn't answer or told me he didn't know, and I made no further inquiry.

Q. What did you ask him?

A. I asked him whether they quit paying.

Q. Whether they quit paying?

A. Yes, sir.

Q. Do you know what he said?

A. He said he didn't know, but I didn't believe it and I didn't ask anything further. I think he said he didn't know anything about it.

Q. Indications were pretty strong they had quit paying?

A. Well, I thought so.

Q. They did fail on that Monday, didn't they?

A. They failed to pay their drafts.

Q. And there were two drafts on Monday, the 5th of October?

A. Yes, sir.

Q. Amounting to some $20,000, those two together?

A. About $20,000.

329 Q. With relation to the matter of mails, you say there are three deliveries of mail a day at your bank?

A. Yes, sir.

Q. One about 8 in the morning?

A. Yes, sir.

Q. One about 11 in the forenoon?

A. Yes, sir.

Q. And one about three o'clock in the afternoon?

A. Yes, sir.

Q. Now, the mail that comes in that 3 o'clock in the afternoon you don't open that same day you get it?

A. Every day except Saturday; do then if I am there.

Q. Then you open it on Saturday?

A. Yes, sir.

Q. Now, then, other days than Saturday when you open three o'clock mail and find drafts in it, and you frequently do, don't you?

A. Yes, sir.

Q. What do you do with them?

A. Look at them and see if there is anything pressing—needs attention, and if there is not, I set it to one side till the next morning.

Q. That won't go in——

A. Too late to collect anything.

Q. Usually go in the drafts of the next morning unless there is something pressing about it?

A. Yes, sir.

330 Q. A letter leaving Kansas City in the evening, as for instance, this evening, would reach the Stock-Yards Bank at 3 o'clock to-morrow afternoon, wouldn't it—the second day at 3 o'clock in the afternoon, wouldn't it?

A. What time does it leave Kansas City?

A. About 7 o'clock in the evening; a letter leaving Kansas City this evening——

A. 7 o'clock p. m.?

Q. Yes; or about then; don't remember just when the train leaves—it is 6.40; that mail gets to the stock-yards about 3 o'clock next day, don't it?

A. I should think not.

Q. Don't you get letters in that mail from Kansas City?

A. I don't remember of ever getting any.

Q. Don't you think you would get any at 3 o'clock in the afternoon?

A. No, sir.

Q. If a letter left Kansas City——

A. We have had some trouble from East St. Louis about letters getting in the 3 o'clock mail, but I don't think we ever got any from Kansas City excepting in the morning mail.

Q. If a letter leaves Kansas City in the morning, when would you get it—suppose a letter left there this morning?

A. Might possibly get ni——

Q. To-morrow morning, wouldn't it?

A. I should think if a mail left there — 6 in the morning — might get in probably next day in the late mail—might straggle in.

331 Q. Do you know that a letter posted at Kansas City and leaving there in the 6.40 mail in the evening would not reach the stock-yards about 3 o'clock next day?

A. I shouldn't expect it to.

Q. You wouldn't think it would; do you know?

A. I have some letters—I have opened the mail there for years, and I have no recollection of getting that kind of mail; the 3 o'clock mail is almost invariably Southern or Eastern mail.

Q. They usually get Kansas City mail in the morning?

A. It is invariably so, I think.

Q. What time in the morning?

A. Get some of it at 8 o'clock; and if it should happen to be delivered in the delivery here we get it at 11 o'clock.

Q. Either at 8 or 11 in the forenoon?

A. Generally, I think, in the 8 o'clock mail.

Q. Don't you mail some of your letters in the morning at the stock-yards?

A. No.

Q. Not any letters?

A. No.

Q. Don't mail any till night?

A. Sometimes a man will want to mail a private letter of his own, and he will go outside and put it in the box. In the afternoon collector comes to the bank and gets it.

Q. What do you know about Rappal, Sons & Company owing the Union Stock-Yards National Bank during this time these drafts were coming in?

332 A. Well, I don't know much about it; matter I paid very little attention to.

Q. Do you know anything about it?

A. Knew they were overdrawn some—how much I couldn't say.

Q. Do you know how much they were overdrawn on the 2nd of October?

A. Haven't the least idea.

Q. Can't give an approximate amount?

A. No, sir.

Q. You knew they had some notes under discount?

A. I believe there was a note there, but I am not positive about that.

Q. Don't you know they had been overdrawn for 3 or 4 months previous to that for a large amount most of the time?

A. Knew they had been overdrawn.

Q. Well, a large amount?

A. Considerably.

Q. Sometimes as high as ten, fifteen, or twenty thousand dollars?

A. Yes, sir.

Q. You knew that fact?

A. I knew it.

Q. You knew that when you opened these letters containing these drafts?

A. Yes, sir.

Q. Have you any independent recollection about opening the letter containing the $19,505.62 draft?

A. I can't say that I recollect that one particularly.

Q. You don't recollect it; you don't know, then, just when
333 you opened the letter containing that draft, do you?

A. I know it was Monday morning.

Q. Do you recollect the fact of opening it?

A. Only from my business. This thing I do when I get there in the morning. The boys all get the mail.

Q. That is all you do recollect about it?

A. Yes, sir.

Q. Now, in relation to this $19,505.62 draft; was that sent by the collection teller to Rappals for collection Monday morning?

A. I don't know.

Q. Do you know anything about it? Don't you know that Mr. Conrad took that draft?

A. No, sir.

Q. You don't know that?

A. I don't know that.

Q. And you don't know what Mr. Conrad did with it?

A. No, sir.

Q. Did you send that draft for $19,505.62 to Mr. Caldwell's desk Monday morning?

A. I put them on the corner of my desk and he comes and gets them, check the letter and put the draft in the latter, and he takes the whole thing.

Q. Do you know about there being a large amount of money de-

posited in your bank, between the 1st and 5th of October, by Rappal, Sons & Company?

A. I presume there was.

Q. Do you know anything about it?

A. No, sir.

334 Q. You don't know whether they deposited any money or not?

A. Not of my own knowledge.

Q. You don't?

A. No, sir.

Q. Have you any knowledge—official or personal knowledge—that they did?

A. I have no doubt they did.

Q. Your recollection is they did?

A. Yes, sir.

Q. Quite a large amount?

A. Don't know what shape it was in; all those things go through —; we take in and pay out a million dollars a day.

Q. Do you have any charge of your customers' ledger in the bank?

A. Yes; individual ledgers.

Q. Do you keep the run of those yourself?

A. No, sir.

Q. Who does?

A. The individual book-keepers.

Q. Does the cashier?

A. Cashier and president have charge of the overdrafts.

Q. And that don't come into your department?

A. Not if I can help it.

Q. I am asking you as a matter of fact.

A. No, sir; not when they are there—have nothing to do with it.

Q. Did you have any conversation with Mr. E. Washburn, the president of the bank, about the Rappals, on Friday, Saturday, or Monday, October 2nd, 3rd, and 5th?

335 A. Don't think I saw him to speak to him.

Q. Did you have any conversation with Mr. Conrad, the cashier of the bank, in relation to it?

A. I asked no question except along in the afternoon, Monday, if they had—don't know exactly what word I used, but substantially, if they failed to pay, and he rather peevishly answered, I don't know anything about it.

Q. Where were you when Mr. Caldwell had his conversation with Mr. Conrad with relation to a telegrams not being sent to Kansas City of the non-payment of the $6,200 draft?

A. Well, I was at my desk, and Mr. Conrad was immediately behind me, and something was jarring, and I found it not—scolding Mr. Caldwell; that was the first I knew——

Q. When was that?

A. Some time on Saturday; don't know what time of the day. I don't fix it.

Q. You heard some conversation between Mr. Caldwell and Mr. Conrad in relation to that telegram?

A. Yes, sir.

Q. But you can't repeat that conversation?

A. No, sir; just knew that Mr. Conrad was a little out of humor.

Q. When you protested this $6,231.10 draft on the 2nd of October, didn't you know that the Rappals were a little out of condition financially?

A. Never had a suspicion of it.

Q. How did it happen that in your protest register here
336 the draft dated October 3rd for $691.70 got in your register before the one for $19,000, dated October 1st?

A. I had them all on my desk together, and one happened to be the handiest to pick up; that is all.

Q. Do you protest drafts in the order in which they come in?

A. No, sir.

Q. Don't pay any attention to that?

A. No, sir; one day is a job with us.

Q. And in relation to the entering of the drafts in the collection register, what is the system—those that come in at the 8 o'clock mail entered first?

A. Yes, sir.

Q. And those at 11 o'clock are then entered?

A. Yes, sir.

Q. And then those that come in at 3 o'clock are entered?

A. The 3 o'clock ones, unless there is something special, lay over till morning; very seldom; nearly all eastern mail.

Q. Most of these entered next morning?

A. Run along days at a time.

Redirect examination:

Q. That mail, you say, is usually eastern mail?

A. Usually.

Q. You spoke of hearing Mr. Conrad and Mr. Caldwell's conversation about a telegram, and that Mr. Conrad was out of humor. You said, I think, that he was out of humor with Mr. Caldwell for not telegraphing?

337 A. That is the way I understood it.

Q. Have you or not many accounts at your bank largely overdrawn—did you have largely overdrawn—in September and October, 1885?

A. Well, we have a good deal more than I like, at a time. Yes; we have a good many.

Q. You spoke about something said. I think the expression occurred in Mr. Bisbee's question. The Rappal, Sons & Company did fail Monday? What was your answer to that?

A. I said they failed to pay the drafts; that is all I know about it.

Q. You don't know whether they were bound to pay the drafts or left any obligations outstanding after Monday?

A. Hadn't the least idea.

Q. So far as you know, they were not insolvent then, and are not now?

A. Not to my knowledge.

Q. So, when you spoke of failure, you meant merely to pay the drafts, as you say?

A. Yes, sir.

338 NOVEMBER 30TH, 1886.

LEWIS L. TROY, being first duly sworn, testified on behalf of defendants as follows:

By Mr. BROWN: What is your name?

A. Lewis L. Troy.

Q. What is your business?

A. Chief clerk of the railroad mail service of the 6th division, comprising the Northwestern States.

Q. Where?

A. Here, at Chicago; superintendent's office in Chicago.

Q. Were you so in September and October, 1885?

A. Yes, sir.

Q. Can you tell us what the course of mail was between Kansas City and Chicago—coming east from Kansas City to Chicago—during those months of September and October, 1885?

A. Yes, sir.

Q. Will you please state what mails arrived here from Kansas City and what hours they arrived here and what hours they reached the Chicago post office?

A. There are two mails daily from Kansas City to Chicago—one is dispatched in the morning, say, between 7 and 8 o'clock from Kansas City—of course, I couldn't give the exact time in force then, but it is between 7 and 8 o'clock in the morning—and they arrive at Chicago the following morning, say 6 o'clock); the second mail would be dispatched from Kansas 6 and 7 o'clock in the morning and arrive at Chicago ing afternoon between 2 and 3 o'clock, say 2.30. ime do they arrive at the post office? 30 minutes after the train is due at the depot, say 3 e afternoon, and by 7 o'clock in the morning at the latest.

Q. Can you tell whether letters directed to the Union Stock-Yards National Bank, Union Stock-Yards, Illinois, come to the Chicago office?

A. Yes, sir; they are treated just the same as if they were addressed to Chicago, Illinois.

Q. They came in those mails, then?

A. Came in directed packages to Chicago?

Q. What is then done with the letters directed to the——

A. Distributed in the various divisions of the Chicago post office to the different carriers running from the main office and from the different sub-stations, including the Stock-Yards, and sent out in pouches from the stations, and sent by the wagons to the stations 3 or 4 times a day.

Q. Letters directed to the Union Stock-Yards are treated in what way?

A. Placed in a package marked Stock-Yards' station, at the main office, and placed in a pouch labeled Stock-Yards, and sent by a wagon to the Stock Yards.

Q. Do you know how long it takes?

340 A. Don't know the time they allow to go to the Stock-Yards.

Q. That can be obtained from those persons having charge of that particular department?

A. Yes, sir.

Q. Do you know what time mail leave or did leave Chicago for Kansas City?

A. There has been but very little change in the leaving time of those mails. Mail leaves on a train departing from Chicago at noon and one 10.30 at night; possibly last year it may have been as early as 9.30 at night. Mail leaving here at noon is due at Kansas City the following morning, and mail that leaves here at night reached Kansas City the next evening at 6 or 7 o'clock, perhaps 8—sometimes as late as 8.

Cross-examination by Mr. BISBEE:

Q. What railroad carries mails between Kansas City and Chicago?

A. Mail from Kansas City and Chicago are sent almost entirely over the Hannibal & St. Joseph and Chicago, Burlington & Quincy. There is a very small mail sent over the Chicago & Alton, but it doesn't amount to but a very few letters.

Q. The chief mail is carried over the C., B. & Q. route?

A. Yes, sir; being railroad post offices on all trains from here to Kansas City on that route, letters all come made up.

341 Q. The mail, then, would leave Kansas City at 6.40 in the evening?

A. Yes, sir; between 6.40 or 7 o'clock; don't know the exact time now. I think it is 7 o'clock or, perhaps, a few minutes after 7, but what it was last year I couldn't say exactly. It now leaves Kansas City at 7.10 in the morning and 6.55 at night.

Q. But last year the hours were a little different?

A. Perhaps not a variation of over 30 minutes.

Q. What times does that mail arrive in Chicago in the afternoon?

A. Due at 2.30; gets to the post-office by 3 o'clock.

Q. The mail that leaves Kansas City at 6.55 in the evening arrives here at 2.30 the next afternoon?

A. Yes, sir.

Q. And the mail that leaves at 7.10 in the morning arrives here about 6.30 or 7.30?

A. Arrives now at 6; for a long time back arrived here, I think, before 6 o'clock; not at the depot; 5.45 is the exact time; be at the post-office by 6.15.

342 NOVEMBER 30TH, 1886.

JAMES DONAHUE, being first duly sworn, testified on behalf of defendants as follows:

By Mr. BROWN: What is your business?

A. I am foreman of the stamp table and receiving and dispatching city mail.

Q. Did you occupy that position in September and October, 1885?

A. Yes, sir.

Q. During September and October, 1885, when did the mails from Kansas reach the Chicago post office, in the morning and in the afternoon?

A. To the best of my opinion, the mails arrived at 6.45 in the morning and about 2.50 in the afternoon to 3.

Q. At the post office or the depot?

A. At the office.

Q. Now, then, when did the mails from Kansas City, that reached the post office in the morning about 6.30 o'clock, leave the Chicago post office for the Stock-Yards?

A. We close at 9.25.

Q. The wagon leaves at that hour?

A. Wagon leaves at half past nine.

Q. With reference to the mail that reached the post office here at 2.50 or 3 in the afternoon, when do the wagons leave the post office for the Stock-Yards with that mail?

A. We closed that mail at that time—at 3.30—and the wagon left about 3.35 or 4.

Q. For the Stock-Yards?

343 A. For the Stock-Yards; yes, sir.

Q. Would the mail that left the Chicago post office a half past 3 or 3.40 for the Stock-Yards contain letters from Kansas City?

A. It ought to; yes, sir; should do so.

Q. Do you know how long it takes the wagons to carry the mail from the Chicago post office to the post office at the Stock-Yards?

A. No, sir; I don't; couldn't say. All I have charge of is receiving and dispatching.

344 NOVEMBER 30TH, 1886.

GEORGE T. WILLIAMS, being first duly sworn, testified on behalf of defendants as follows:

By Mr. BROWN: You have testified in this case before, I believe?

A. Yes, sir.

Q. You then testified that you were in September and October and still are an officer of the Union Stock-Yards and Transit Company?

A. Yes, sir.

Q. What officer?

A. Secretary and treasurer.

Q. Are you familiar with the customs and the course of business at the stock-yards?

A. Yes, sir.

Q. Of property which is consigned to the stock-yards company or through the stock-yards company to other persons?

A. I know the customs and rules of that business.

Q. When you testified in this case before you produced, and by stipulation took away again, certain orders pertaining to the transactions which are discussed in this case; have you those orders with you?

A. I have.

Q. Will you please produce them?

A. These four orders, I believe.

Q. Do you remember whether those orders came to you
345 and your company through Rappal, Sons & Company or directed?

A. I can't state from memory as to these, from the fact that, of course, they come to my office from different —, and don't come direct from them, perhaps; but my impression is they were presented by Rappal, Sons & Company.

Q. Assuming that these orders came to you through Rappal, Sons & Company, I will ask you whether if Rappal, Sons & Company presented these orders to you upon October 3rd and the cattle mentioned in said order arrived at the stock-yards upon the morning of the 3rd of October, you would have diverted the consignment of those cattle or delivered them to any other persons had you received instructions by wire from A. J. Gillespie & Company or any other person in Kansas City upon Friday, the second of October?

A. No, sir.

Q. Mr. Gillespie has testified in this case that in a certain contingency, which he says didn't happen, he would have changed by telegram the consignment of the cattle mentioned in this order. My question to you is whether he could have so changed the consignment of the cattle mentioned in this order by telegraph, assuming that this order was then in the hands of Rappal, Sons & Company, in the mail, directed to Rappal, Sons & Company, and the
346 cattle were en route, so near the stock-yards as to arrive the next day—next morning?

A. Couldn't change the consignment; that is stated on the bills or upon an order—the telegraph order.

Q. Without the consent of the person——

A. Without the consent of the party they are consigned to or by the order of the railroad company or by legal process to change.

Q. What do you mean by legal process?

A. There is such a thing as stopping a shipment of cattle or a delivery of cattle by legal process.

Q. You mean, by legal process, attachment and execution?

A. Attachment and execution or replevin.

Q. Would you have used an instruction by wire to you, signed A. J. Gillespie & Company, not to deliver the cattle mentioned in that order to Rappal, Sons & Company if they presented that order?

A. If this order was presented first before the telegram?

A. No; suppose the telegram was received Friday night and this order was presented Saturday morning?

A. Well, I couldn't change the consignment of the bills by any telegram, and had this been presented Saturday morning I would not have changed it; would not have changed it any way, by telegraph order, without the consent of both parties in this case, Rappal, Sons & Company or by order of the railroad company.

347 Q. What is the custom of the railroad company in relation to changing consignments?

A. They don't usually do it; if they do they have got to assume the responsibility themselves.

Q. What responsibility do they assume?

A. The claim that the consignee might have upon the stock.

Q. In whom does the right to the possession of those cattle, so far as the Union Stock-Yards Company is concerned and the railroad is concerned, appear to be by that order, or would it appear to be by that order before Rappal, Sons & Company was endorsed upon the back of it?

A. That order and the bills both together leave the ownership of the stock in Rappal, Sons & Company.

Q. Would you undertake to say whether or not they were rightfully entitled to the possession of those cattle?

A. That would not be a matter for us to investigate, only to take the bills and the order as they read.

Q. As to this order, I will ask you if there is any difference in your testimony?

A. This is Quinlan, Montgomery & Company to A. J. Gillespie & Company, endorsed over to Rappal, Sons & Company by A. J. Gillespie & Company, and the stock delivered to Rappal, Sons & Company.

Q. I ask you whether your testimony as to the possibility of changing the consignment of cattle referred to in that order

348 by the telegram sent October 2nd would vary at all from that which you have already given?

A. Be the same in this case, same as the other; all alike in that relation.

Q. Can you tell when the cattle mentioned in that order arrived? By that order I mean an order dated, office of A. J. Snider & Company, October 3rd, 1885; refers to one car of cattle.

A. That car of cattle was received on October 6th at the stock-yards.

Q. Was that delivered to Rappal, Sons & Company upon this order?

A. Yes, sir.

Q. Then I understand you to say that you would not have delivered these cattle otherwise than as ordered by these four different orders from Rappal, Sons & Company without taking the responsibility of determining the ownership and subjecting yourself personally responsible to Rappal, Sons & Company?

A. Certainly.

Q. Would you have done that at the request, by wire or otherwise, of A. J. Gillespie & Company, unauthorized by legal process?

A. No, sir.

Cross-examination by Mr. BISBEE:

Q. The great bulk of cattle that come into the Union Stock-Yards are consigned to commission merchants for sale on commission, are they?

349 A. Yes, sir.

Q. Do the railroad companies that bring in cattle turn their cattle over to the stock-yards company itself directly?

A. They do.

Q. And your company pays the freight on those cattle, don't it?

A. To the railroad company—yes, sir.

Q. And you require of commission merchants a bond that they will pay you that freight, and it is usually paid about once a week, isn't it?

A. Twice.

Q. You do require that bond of them?

A. We require bonds of commission men that wish open accounts—yes, sir.

Q. And you usually send in your bills twice a week and collect the freight and other charges that you have?

A. We do.

Q. Now, in a case like the order I show you, dated October 1st, 1885, for 21 cars of cattle, how do you come into possession of the order which I have just shown you, signed by Quinlan, Montgomery & Company, directing your company to deliver those cattle to A. J. Gillespie & Company? How did you come into possession of that paper itself—the order?

A. I must answer in this way: From the manner it is endorsed it must have come through Rappal, Sons & Company.

Q. That is, they brought it to your office?

A. Presented or sent it to our office.

350 Q. Do you know whether they presented that order before or after the cattle arrived at the stock-yards in your possession?

A. That I can't say, because personally I don't receive all these orders. Sometimes the order may get in a short time before the stock arrives, but usually after.

Q. The order usually comes afterwards?

A. Occasionally comes afterwards and occasionally before the arrival.

Q. This order, you say, from the endorsement on the back, which is "Deliver to Rappal, Sons & Company.—A. J. Gillespie & Company," was brought to your office, as you think, by Rappal, Sons & Company after the cattle arrived at the stock-yards?

A. That I can't say—whether it was after or before in this case; can't recollect that myself.

Q. Have you anything to show whether or not you got the order before or after you got the cattle?

A. Well, there is nothing that would show it, from the nature of the business; would not show it—nothing could show it—unless a memorandum was made of the hour and time; that is not done.

Q. Now, if those cattle came into the stock-yards on Friday night and the order didn't come until Saturday morning, if you had been notified and directed by A. J. Gillespie & Company and by the railroad company that shipped those cattle not to deliver them
351 to Rappal, Sons & Company on Saturday, should you have delivered them in spite of those orders?

A. Not upon Gillespie's order I would not. Upon the railroad company's order—I would take the railroad company's order. By my answer I mean that I would not have stopped the delivery of the cattle to Rappal, Sons & Company merely upon the order of A. J. Gillespie & Company, but on the order of the railroad company delivering the cattle not to deliver them to Rappal, Sons & Company we would have held them.

Q. If those cattle came into your possession on Friday night, and before you had delivered the cattle to anybody, while they were in your possession or the stock-yards company's possession, if you had had notice from the railroad company not to deliver them to Rappal, Sons & Company, you would not have delivered them, you say?

A. Upon their notice to change the bill or to hold stock we always hear to that notice.

Q. Either change the consignment or hold the stock?

Q. If they order us to change the consignment or hold the stock we will obey that order, the railroad company delivering the stock.

Q. Now, isn't it true that it sometimes happens that the shipper of stock revokes the order of delivery or cancels it by telegraph
352 and directs you to hold the stock for further advices or further directions? Don't that happen often?

A. Sometimes there are such orders; a printed telegraph order that I have seen occasionally—one or two—up there.

Q. If you knew that drafts were drawn on a large shipment of cattle—very large shipment of cattle—and the shipper was a responsible party, and the cattle came into your possession, and the commission merchant they were consigned to had failed and refused to pay the drafts drawn on those cattle, and you were notified by the shipper to hold those cattle for further orders, wouldn't you hold them for awhile?

A. I have got no right to hold the cattle.

Q. I am asking what you would do.

A. I would not be directed—do any different from what the orders, written orders, or the bills read.

Q. If the written order was countermanded by the shipper himself while the cattle were in your possession and asking you to hold these cattle for further advices wouldn't you hold them?

A. Couldn't.

Q. But would you?

A. No, sir; because the order of the party holding the order we consider is the party that stock belongs to or that has jurisdiction over it, and we consider that he has an interest, and if there
353 is anything to be protected he is to be protected the same as the shipper, because there are so many advances made on stock; that rule follows.

Q. It often happens that the consignee has advanced on stock?

A. Yes, sir; consequently we require his consent, together with the order, by telegraph.

Q. If you knew that the consignee had failed and refused to pay the drafts drawn on a shipment of cattle, and the shipper countermanded the order and asked you to hold those cattle, under those circumstances wouldn't you hold them?

A. I would have no authority, excepting upon my own responsibility, to hold them.

Q. What would be the responsibility if you had the cattle in your possession?

A. Can't tell what claim there would be by the consignee, not knowing his claim.

Q. But supposing he had failed, was absolutely insolvent, and refused to pay the drafts drawn on the cattle and had made no advances on the cattle and you had directions to hold them, what responsibility would you take?

A. I wouldn't assume the responsibility; I would only act in this wise: I would advise him that the stock was held. I couldn't shut him out if he made a demand for the stock.

Q. If the consignor should revoke the order on you in relation to who the cattle should be delivered to, what right would
354 you have to deliver the cattle to the party after the order was revoked?

A. Couldn't deliver them until further orders if he revoked them.

Q. Until further orders?

A. Yes, sir.

Q. You speak in your direct examination of these papers indicating the ownership of cattle indicated that Rappal, Sons & Company owned these cattle. Did they indicate anything in the world except that these cattle were consigned to Rappal, Sons & Company?

A. I don't mean to say that they would indicate that they were the actual owners of the stock, but parties to whom the stock should be delivered when consigned.

Q. You mean they will indicate that Rappal, Sons & Company were entitled to the possession of these cattle to sell?

A. For the stock. I don't know whether—the natural course of business, of course, is when stock is consigned—sent there to be shipped—sold on commission; but in this identical case or any particular case it is their right to have the possession, according to the directions of the bills and orders.

Q. And in the natural course of business the commission merchant sells the cattle and accounts to the shipper for what is due him?

A. Yes, sir.

355 Q. What is going to him—for the proceeds of the cattle?

A. Yes, sir.

Redirect examination:

Q. You say that upon the orders of the railroad company which brings in the stock you would take those orders and change the con-

signment of the stock as they may direct. I will ask you why you do that?

A. The railroad companies have the right, in transacting the business, from the very fact that it is necessary sometimes to make changes—to change and rectify their bills at any time before the bills are taken up by the consignee. They have the right—that is understood between the railroad company and the stock-yards company that they have the right to make any changes upon the bills delivered to the stock-yards company as to consignor, consignee, or charges, if done before the consignee has taken up the bills.

Q. Now, suppose that is the arrangement or contract between the stock-yards company and the railroad—suppose by following that course the stock-yards company should become liable or responsible—what course would you then take?

A. The responsibility would rest upon the railroad company that gives that order.

Q. There is a reclamation upon the railroad company?

356 A. Yes, sir; if there is any claim presented to the company in consequence of that change.

Q. Then, what you say amounts to this, that you take whatever risk there may be in any such change and hold the railroad company responsible for whatever loss to the company?

A. Yes, sir.

Q. What are your relations with the railroad company—are you generally indebted to them, or they to you?

A. We are generally indebted to them.

Q. And have in your hands security for any such losses, I suppose, of large sums?

A. The nature of the business between the stock-yards company and the railroad company is such that the stock-yards company, for a certain class of business, is in debt to them generally all the while, and the railroad company is owing the stock-yards company for a certain class of business.

Q. Is the balance quite large in favor of the railroad?

A. Yes, sir.

Q. Amounting to a quarter of a million dollars frequently?

A. Not as much as that; frequently runs over $100,000—some roads.

Q. Will you indicate on what roads the cattle that are included in those four orders came?

A. The bills show for themselves.

Q. Just state, please.

357 A. 20 cattle by the C., B. & Q. railway; 16 cars of cattle by the Chicago, Burlington & Quincy, and 4 cars by the Chicago, Burlington & Quincy, and 7 cars by the Chicago & Alton.

Q. Then the roads bringing these cattle to the stock-yards were the Chicago, Burlington & Quincy and the Chicago & Alton?

A. Yes, sir.

Q. In cattle coming from Kansas City, I will ask you whether such cattle are brought through by the same road? Those cattle

which are delivered to you by the Chicago, Burlington & Quincy would leave Kansas City by the same road, I suppose?

A. The Chicago, Burlington & Quincy, I think, control the entire line; possibly don't own the entire line, but it is under their control, and they run the stock through direct.

Q. And so with the Chicago & Alton?

A. Yes, sir.

358 NOVEMBER 30TH, 1886.

ELMER WASHBURN, being first duly sworn, testified on behalf of defendants as follows:

By Mr. BROWN: Your full name is Elmer Washburn?

A. Yes, sir.

Q. You have been already sworn in this case, I believe, and at that time you testified that you were president of the Union Stock-Yards National Bank, one of the defendants in this case?

A. I presume so; that is the fact.

Q. And what is your connection with that bank, so far as the management of its business goes? To what extent do—are you the general——

A. I am general superviser—superintendent of it all, and more especially attend to the loans, overdrafts, and bills of exchange.

Q. You make it your object, Mr. Washburn, I take it, to be generally cognizant with the business of the bank?

A. Yes, sir.

Q. Upon whom does the responsibility of the management of the bank fall principally?

A. If anything went wrong it would reflect upon the president and cashier both.

Q. But you have as much of the responsibility as anybody, I suppose?

A. Quite as much; more, probably.

359 Q. How long have you been the president of the Union Stock-Yards National Bank?

A. Four years the 12th of December.

Q. What was your business before that time?

A. National bank examiner.

Q. About how many banks did you have under your jurisdiction for examination during that time?

A. From 95 to 106 or 108—somewhere along there.

Q. How often did you make an examination?

A. Once a year in the country and twice a year in Chicago.

Q. What geographical extent?

A. Northern judicial district of Illinois and the southern 3rd and 4th tiers of counties in Wisconsin.

Q. Are you acquainted with the firm of Rappal, Sons & Company?

A. I am.

Q. Are you acquainted with the separate members of that firm?

A. I am.

Q. F. J. Rappal, Sr., F. J. Rappal, Jr., and Lawrence L. Rappal?
A. Know them all.
Q. How long have you known them individually?
A. I have known Mr. Rappal, Sr., for some 15 years.
Q. Where did you first know him?
A. Joliet.
Q. What business relations did you have with him at that time?
360 A. At that time I was warden of the prison and Mr. Rappal or Rappal & Adler were engaged in the market business, trading cattle, &c.; had some dealings with them as warden of the penitentiary.
Q. How long have you known the boys—Lawrence L. and F. J., Jr.?
A. About 4 years.
Q. How long have they been in partnership as Rappal, Sons & Company?
A. About 4 years. I think their business commenced at the yards about the time I went there to the bank or that winter.
Q. Have you had business with the firm of Rappal, Sons & Company as a firm as manager of the Union Stock-Yards National Bank since that time?
A. I have.
Q. From that time up to when with the firm of Rappal, Sons & Company?
A. Well, up to about the 6th or 7th of October, 1885. I should say when they did business under the name of Lawrence L. Rappal, trustee.
Q. After when you say they did business under the name of L. L. Rappal, trustee?
A. In the name of L. L. Rappal, trustee, until some time during the summer; they formed a partnership with Mr. Lamb and they are continuing the business now.
Q. What, during the time you have known them and have done business with them, have been the business reputation of
361 Rappal, Sons & Company and of the individual members of the same?
A. Good; excellent.
Q. What, during the years you have known him and have been conversant with it, has been the credit of F. J. Rappal, Sr.?
A. Good; unquestioned integrity.
Q. What was the nature of the business which the Union Stock-Yards National Bank had with the firm of Rappal, Sons, & Company during the 4 years of which you have spoken?
A. Kept an account of our bank; borrowed some money of us; borrowed some money on notes, and had advances in the shape of overdrafts.
Q. In your testimony and that of other witnesses the account of Rappal, Sons & Company or portions of it, extending from the 21st of July on until about the middle of October, have been given, in which it appears that upon the 21st of July, 1885, Rappal, Sons &

Company were overdrawn $5,435.79, and that upon divers other days, there being 10 or so specified, there were overdrafts of various amounts; and also testimony has been given that upon 4 days mentioned, July 23rd, 1885, August 27th, 1885, August 28th, 1885, and September 3rd, 1885, there were various credit balances which they had, and those seemed to be all the credit balances between July 1st and October 3rd, 1885. I wish now to ask you
362 whether the account of Rappal, Sons & Company was as it thus appears between the 21st of July and the first part of October or whether they had overdrafts at the bank before that time; also during these 4 years.

A. They frequently had overdrafts; had them whenever they made representations that justified them having it.

Q. For considerable periods of time together would their account be overdrawn?

A. Been temporarily overdrawn to-night and good to-morrow.

Q. And overdrawn 2 or 3 days in succession?

A. Several days in succession during the last year and paying a good many drafts.

Q. Was there anything peculiar in your business relations with Rappal, Sons & Company between the 1st of July, 1885, and the 5th of October, 1885?

A. Nothing out of the usual course.

Q. What is the custom of your bank in relation to overdrafts, its general custom in relation to overdrafts, with commission men?

A. We very seldom refuse to let a commission man overdraw when he represents that he has stock in the yards, usually, or stock in transit, and has paid or wants to make advances on.

Q. You have testified heretofore that overdrafts with the Union Stock-Yards National Bank were very free as compared with your discounts; will you please state——

A. Free as compared with any other bank that I know anything about.

363 Q. Is it the result of your experience as a bank examiner and as president of this bank that the Union Stock-Yards National Bank allows overdrafts more freely than any other?

A. More freely than any other bank I know anything about or ever heard of; don't know that they have ever lost any money in that way, either; makes it very convenient for our customers.

Q. If they want money for short periods?

A. Yes, sir; and don't want to pay interest on it any longer than needed.

Q. I think you already stated that interest is charged by the bank upon all overdrafts.

A. Yes, sir.

Q. That is the method by which you make your money?

A. Some of it.

Q. Is there any special reason why Rappals were allowed these overdrafts? Did they make representations to you?

A. Yes, sir.

Q. Of what nature, during this period?

A. They had stock in the yards usually, or they had stock in transit to arrive the next day or the day after; had sold stock and couldn't get paid till next morning—somewhat to that effect; and that they had paid the drafts or wanted the money to pay the drafts.

Q. It appears from the evidence that upon the evening of
364 October 3rd, 1885, there was a credit balance to the account of Rappal, Sons & Company of $1,136.03. I will ask whether, up to Saturday night, October 3rd, 1885, you knew, or had any reason to suspect, that Rappal, Sons & Company were in financial difficulties?

A. I have no reason to suspect that, and had not then.

Q. And had you known or suspected?

A. I had not.

Q. When, if ever, did you first hear that Rappal, Sons & Company were in any financial trouble?

A. Monday the 5th of October, 1885.

Q. Then, from anything that you knew, up to the evening of Saturday, wouldn't you have allowed Rappal, Sons & Company to overdraw upon Monday, when you had previously allowed them on the same representations?

A. Yes, sir; even later than Saturday.

Q. Then, Mr. Washburn, when did you first hear of any financial trouble which Rappal, Sons & Company had?

A. Monday, the 5th of October, 1885.

Q. Please state the entire circumstances of your so hearing and conversations that took place; how you heard; what conversations you had and with whom, and what you did in consequence thereof.

A. The first I knew they were having any financial trouble was Monday, when I reached the bank. Mr. Conrad told me
365 what he had heard about them.

Q. What had he heard?

A. I don't remember the conversation. It was to the effect that they would probably be unable to pay the drafts that day, and didn't think that we should advance them, and probably told me that there were drafts there that they had declined to pay; must have been about somewhere from 11 to 12 o'clock. I am in the habit of getting down there somewhere about that time.

Q. 11 to 12 o'clock in the morning?

A. Yes, sir. I should say not later than 12 nor earlier than 11.

Q. I will ask you what Mr. Conrad said about this matter in relation to his having heard they were in trouble?

A. Well, I don't remember whether he gave me all of his information or not. He was apparently very diligent in the matter.

Q. What time did you leave the bank Saturday preceding?

A. 3 o'clock, I expect; that is my custom; can't say.

Q. You have already said that at that time nobody had said anything——

A. No.

Q. Mr. Conrad or anybody else?

A. Up to Monday, about noon, of the 5th of October, 1885, I heard

nothing; nothing had been intimated to me and I had seen
366 nothing unusual. They were doing considerable business and asking for overdrafts, receiving and handling a good deal of stock, and overdrawing and making their account good, overdrawing one day and making good the next—the same as they and scores of others were doing and had been doing and are doing now.

Q. What did you do in consequence of what you heard from Mr. Conrad?

A. I saw one of the firm right away.

Q. Who did you see then?

A. I don't know whether I sent after them or what. I think Mr. Miller, their attorney, was in the bank some time about noon, and I think Lawrence Rappal.

Q. Was it in the office of the Rappals that you met Mr. Miller?

A. I don't remember; met him somewhere that day.

Q. Well, what conversation took place?

A. Well, some time during the day I had a talk with some of the firm, I think Lawrence Rappal; the father was not there, I remember.

Q. Not in the city, was he?

A. Not in the city, as they told me. I had no idea he was in the city; don't suppose he was now; I don't know of my own knowledge. They were then owing us a note of $7,000, which had some collateral with it—collateral note—I think, of $2,300. The note had been past due a few days; had been waiting for Mr. Rappal to return
367 to make a new note with which to pay it, and I asked them what they could do about that note, it was past due, and I would like to have it paid up. Well, they said they should have some cattle in the next day and they could pay something on, the note. I asked them whose cattle they were. They said Bowen & Company's. They said from the proceeds of the sale of those cattle they would pay something on the notes.

Q. Did they say anything further about the relations of Bowen & Company to them?

A. They wanted to know, or I asked them—I have forgotten which spoke of it first—whether it would be proper to use the proceeds of the sale of those cattle to apply on our note. I told them, Now, supposing they were cattle they received on commission, and when I asked them how they would pay the note, and they said Bowen & Company were owing them some money and they would pay part of it from that. I asked them how they were going to hear from Bowen & Company. They said Bowen & Company were going to ship them some cattle; thought they were on the road then and would be in the next day, and they wanted to know if that would not be all right. I said if Bowen & Company owe you, you can make an off-set and do what you please with the money; if you have any money that belongs to you, I want it on this note.

368 Q. Did they say anything about any other cattle?

A. I don't remember that they did.

Q. Do you remember any conversation about some cattle that

were coming to them, consigned, belonging to some other persons than Bowen & Company?

A. I knew a few head of cattle that came in at the same time, I think the same cars, with Bowen & Company's cattle; they were consigned by another party and belonged to another party, and I knew that they returned the proceeds of those cattle and did not pay them to us. I know they were told it was not the proper thing for them to do.

Q. By whom?

A. I know I told them so, and I think their attorney advised them so.

Q. Do you know, as a matter of fact, of the money that was deposited in your bank upon the 5th and 6th of October? They gave you, upon the 6th of October, I think, according to your testimony, a check on account of this note; what became of the balance of that note?

A. It was paid by another note.

Q. Of F. J. Rappal, Sr.?

A. Of F. J. Rappal, Sr.

Q. Secured as has been stated in the testimony?

A. Secured by a mortgage on some farm lands and city property in Will county.

Q. During this conversation that you had with the Rap-
369 pals, or at any other time, had you heard of A. J. Gillespie & Company in connection with these transactions which you have detailed or in connection with any money which you received upon the 5th or 6th of October, or which you had theretofore received?

A. You mean to ask if during that time; prior to what date?

Q. Prior to the 7th of October, I will say.

A. If prior to the 7th of October I had heard from any source that A. J. Gillespie & Company claimed any portion of the money which came to us?

Q. Yes.

A. I don't know what date it was. I think late in the day Tuesday, the 6th of October, or Wednesday, the 7th of October, I heard that one of the firm of A. J. Gillespie & Company had been there at the bank; think I heard that he came there to see Mr. Conrad and said to Mr. Conrad that we had got some of their money or something to that effect.

Q. You don't know what day that was?

A. Well, it certainly was not the 5th, and if it was the 6th of October it was in the afternoon; more likely to have been the 7th.

Q. Previous to that time had you heard anything?

A. No; not a word or intimation.

Q. There is a deposit upon October 6th of certain money in your bank, aggregating $10,179.89; was that deposited before or
370 after you heard that Mr. Gillespie or A. J. Gillespie & Company had any connection with any money?

A. I don't remember about the sums.

Q. You remember there were sums deposited by Rappal, Sons & Company in your bank Tuesday morning?

A. Yes, sir; some deposited and checked out.

Q. And that was before or after this visit of the representative of A. J. Gillespie & Company, if that took place upon October 6th?

A. It was before.

Q. There is a transaction, which is shown upon the books of October 9th, of a deposit of $4,006.73, which relates to the discount of a note of F. J. Rappal, Sr.?

A. That was the proceeds of a new note, which was secured by a mortgage on real estate, which was checked out to pay the balance of the old note.

Q. I understand it, and it has all been stated in the testimony heretofore. Now, I desire to ask when you received the new note as security—when you actually got it?

A. Probably the day it is dated—the 9th of October.

Q. I will ask you to refresh your memory—whether you don't recollect getting that note of F. J. Rappal, Sr., secured by land in Will county, upon Tuesday afternoon, October 6th. Do you remember meeting me at Mr. Rappal's house, of going home late that evening, and my sending the deed to Joliet the next day?

371 A. Yes, sir; must have been the day; Tuesday, the 6th of October, went to Mr. Rappal's house.

Q. I will ask you whether, up to that time, or whether, up to the present time, you have ever heard from Rappal, Sons & Company or any member of their firm that any of the proceeds of cattle belonging to A. J. Gillespie & Company was deposited with you or paid to you in any form or to your bank.

A. Never from Rappal, Sons & Company. They have always claimed that the money that was deposited was not money then belonging to A. J. Gillespie & Company.

Q. I will ask you whether, at any time, you or any of the officers of the Union Stock-Yards National Bank, to your knowledge, made any plan, scheme, or arrangement of any kind to procure the payment of your indebtedness from money belonging to the complainants, A. J. Gillespie & Company, or to procure such payment through the concealment of any of the affairs of yourself or Rappal, Sons & Company.

A. Never. Nothing of the kind has been done from which any fair-minded man could draw such an inference, to my knowledge; nothing of the kind would be allowed if I was a party. I don't presume it would be allowed if any other officer of the bank was cognizant of it. In this connection I would say that I know that a great deal has been done at institutions down there to put the funds in the hands of ——; that the proceeds of the sale of stock

372 should go to the parties who owned the stock.

Q. Did you have any notice or any suspicion that Rappal, Sons & Company were depositing in your bank or using to pay any indebtedness to you any money which they had not the right so to use?

A. I had not the remotest idea that they were.

Q. I will ask you if any such plan or scheme or arrangement as I have previously referred to had been executed by any of the officers of the bank whether you would have known it from your position.

A. It is possible that such a thing might have been done—might have conspired to do a thing of that kind without my knowing it—but it is not probable at all. I don't mean any reflection on any officer of the bank when I say it is a possibility.

Q. If it would be possible, then, it would have been a connivance of the cashier, I suppose, would it—the other officers besides yourself?

A. They all look to the cashier and myself for instructions almost wholly—from one or the other of us. One or the other of us would have to be cognizant of a scheme of that kind in order to carry it out.

Q. There has been a draft produced in evidence here for $6,231.10, dated September 30th, 1885, drawn upon Rappal, Sons & Company by A. J. Gillespie & Company. I will ask you when, to your recollection, was the first time you ever saw that draft?

373 A. Oh, I don't know when I did; probably saw it last the time the evidence was taken; don't know whether I saw it before or not.

Q. By the last time the evidence was taken do you mean in 1886, when this testimony was being taken?

A. Yes, sir; probably saw it then.

Q. It has been in evidence that the non-payment of that draft upon the 2nd of October was not telegraphed upon that day to the Kansas City Stock-Yards Bank. I will ask you whether you knew at the time of any failure to telegraph the non-payment of that draft?

A. At the time I knew it—Saturday, the 3rd.

Q. How did you come to know it?

A. From the cashier.

Q. What did he say about it?

A. Oh, I don't remember his language.

Q. What was the substance of it?

A. I remember that he was vexed that it had not been telegraphed.

Q. Did you give any orders of any kind, directly or indirectly, implied or constructive, that the non-payment of that draft should not be telegraphed to the Kansas City Stock-Yards Bank?

A. Never.

Q. I mean by my question that the non-payment of the draft of October 2nd should not be telegraphed.

A. I supposed that was what you meant.

374 Q. Do you know why it was not telegraphed, of your own knowledge?

A. I only know from what Mr. Caldwell has testified and what he has said before testifying; from the reasons that he gave.

Q. What reasons were ever reported to you by anybody?

A. That Mr. Caldwell forgot to write a telegram and leave it on the desk.

Q. Did you ever hear, in any way whatever, that it was done through any directions or orders of anything of that sort of any of the officers of the bank?

A. I know it was not done by their directions, and I never heard any intimation of its being done by the direction of any one else.

Q. But you do know that Mr. Conrad seemed vexed and displeased that it had not been——

A. Very much.

Q. There have been two other drafts put in evidence—one for $19,505.72 and $691.70, drawn on Rappal, Sons & Company. What do you know of those drafts?

A. I know by the records when they were received, protested, and returned.

Q. There is one draft of $19,505. I will ask you whether you ever saw or knew of that draft before the 5th of October, at which date it appears to have been protested?

A. I never could have seen it before that time, and I don't know
I saw it that time; probably did, for I think Mr. Conrad,
375 when he got to the bank, on the 5th of October, was looking
around pretty sharp to see what was to be done, and probably showed me this draft or told me about it.

Q. How is it about the other one—the $691?

A. I don't remember about that; probably reached there Monday, the 5th.

Q. It has been stated that Mr. Conrad, the cashier, upon Monday took that $19,505 draft from the collection teller and took charge of it himself, as president of the bank and as a bank officer. Can you explain that? Is it out of the usual course of business?

A. Well, he doesn't. The custom is to turn the drafts over to the collection teller when the mail is opened and there are drafts for collection; he keeps them in his custody until they are presented and paid or returned to him—till some disposition is made of them. If Mr. Conrad didn't take great pains to find out what drafts there were there and what was going to be done with them he didn't do his duty.

Q. Why?

A. Because he knew that the Rappals were in financial trouble and financial straits, and, as an officer of the bank, ought to use great diligence in collecting any drafts; would be very remiss in his duty if he had not. In order to make it doubly sure, it is well he attended to it himself.

Q. Then it would be the duty of Mr. Conrad, as cashier,
376 if, during the morning of October 5th, he had been informed
by Rappal that they were in financial difficulty to take special charge of drafts coming upon them that day?

A. It would be his duty to make special efforts to look after the collection if they came in the best way he could, the same as any other matter that required special attention of the bank.

Q. I will now ask you if you connect these drafts for any reason—

these three drafts which have been presented—with any dealings of Rappal, Sons & Company with any deposits in your bank or any payments to you? Upon October 3rd, Saturday, it appears that there was a deposit of $23,290.83. Do you, for instance, connect any one of those drafts that came to you with that particular deposit or deposits?

A. I suppose you mean to ask if I supposed or presumed that either of these deposits ought, for any reason, to have been paid out of that deposit?

Q. Exactly.

A. No reason whatever to suppose so—not the slightest. Nothing occurred by which I was bound or could be expected to take notice.

Q. You don't know now, do you, that they should have been so paid?

A. No; no reason to suppose so.

Q. Do you know of anything in the course of the bank in handling those drafts in any way out of the usual and regular
377 course of the business of the bank, with the possible exception of the non-telegraph of the non-payment of that first draft upon Friday?

A. Nothing whatever.

Q. When on Monday you had an interview with one or both of the younger men belonging to the firm of Rappal, Sons & Company, having heard they were in financial difficulty, can't you remember more of the conversation? What did they tell you then? Did they explain to you the nature of their financial difficulties, if any, or state their condition, or did you go into inquiries of that sort with them? If so, state, as fully as you can, what you asked them and what they told you.

A. I can't repeat the conversation, but either Monday, the 5th of October, or Tuesday, the 6th—either one or both days—they told me their situation fully; at least, I believe it was fully told me—all they knew about it apparently.

Q. What did they tell you?

A. Well, one thing they said, they were selling stock for Bowen & Company, and that they owed them——

Q. They told you how much?

A. Yes, sir; a very large sum.

Q. Can you tell how much, approximately?

A. Well, to the best of my recollection, about $19,000. I don't know that I am right about that, but it was a large sum; should say not less——

Q. Might it not have been $30,000?

378 A. Might have been.

Q. What further did they say about their intentions and their prospects and what they were going to do?

A. They said they had communicated with their father, and he would be home right away; thought there was enough owing them to make good anything they owed.

Q. Did they say how it happened that Bowen & Company owed them so much money?

A. That Bowen & Company would ship them some cattle—on the way—well, for the advances they had made them.

Q. Advances to a greater extent than the cattle they had received and sold, do you mean?

A. I don't remember about that. They had been making Bowen & Company advances all the time. That was the result of their inability to pay—Bowen & Company owing them, had not reimbursed them.

Q. In the conversation which you had with Rappal, Sons & Company upon Monday, the 5th, or previous times, were the names of A. J. Gillespie or A. J. Gillespie & Company mentioned in any way?

A. I have no recollection about it. Possibly they were in connection with these drafts. I possibly did ask about the paying of this $19,000 draft Monday.

Q. You think you asked them?

A. Possibly did. It would be a very natural thing for me
379 to do to ask if there was any chance for them to pay that draft. In that event, there would be something said about A. J. Gillespie & Company. I should have been obliged to say who the maker of the draft was.

Q. Do you remember any conversation; if so, what was it?

A. No; I can't remember definitely any conversation.

Q. You can't recollect their saying anything?

A. No.

Q. Are you acquainted with the course of mail between the Chicago Post Office and the Union Stock-Yards branch office—know how long it takes to come and go from the Chicago post office to the Stock-Yards post office?

A. I don't know about the mail. I know how long it takes our money wagon.

Q. How long?

A. From the First National Bank to the Stock-Yards Bank, which is about 5½ miles——

Q. How long does it take?

A. I don't think we ever make it less than three-quarters of an hour—from three-quarters to an hour.

Q. When the mail arrives at the Union Stock-Yards how is it distributed—how often is it distributed from the Union Stock-Yards branch office of the bank?

A. We get the mail about 8 o'clock in the morning, about 11 in the morning, and about 3 in the afternoon; very close to
380 those hours.

Q. Suppose that a letter reached the Union Stock-Yards post office at or about 4 o'clock in the afternoon of Saturday, when would it be delivered by the post office authorities to the bank?

A. 8 o'clock Monday morning.

Q. On other days in the week a letter coming to the Union Stock-Yards post office about 4 in the afternoon would be delivered when?

A. About 8 o'clock next morning.

Q. And a letter arriving at the Union Stock-Yards post office at

any time after a quarter past three, say, in the afternoon, would be delivered when?

A. I don't think it would come till next morning. Never, to my knowledge, do we get any mail there after 3 in the afternoon.

Q. If you know any other thing or matter that seems to be material I should like to have you state it in this matter.

A. No, sir; I don't think I do.

Cross-examination by Mr. BISBEE:

Q. When did the firm of A. J. Gillespie & Company commence drawing drafts on Rappal, Sons & Company that came through the Kansas City Stock-Yards Bank for collection to your bank?

A. I don't know; I couldn't testify on that point; could testify from the records.

381 Q. Have you those records present?

A. The record I was thinking of when I spoke is here—the collection teller's book—but I think, on the whole, that doesn't show the drawer's name; simply show- Kansas City. The maker's name wouldn't appear in the record. When I spoke I had that in view.

Q. How many drafts, in your judgment, were there drawn by A. J. Gillespie & Company on Rappal, Sons & Company between April 20th and October 3rd, 1885?

A. I couldn't make any estimate of it.

Q. It was a very large number, wasn't it?

A. I don't know.

Q. Don't you know that there was a large number of drafts drawn between the dates above named?

A. By A. J. Gillespie & Company against Rappal, Sons & Company?

Q. Yes.

A. No; I don't.

Q. Do you know there were any drafts drawn?

A. Yes, sir. Between the 1st of April and what time in October?

Q. The 3rd day of October.

A. Yes, sir.

Q. How many do you know of being drawn between those dates?

A. Well, there are three—one of them on the 3rd.

Q. Do you know of any others than the three before you in evidence and that are involved in this litigation?

A. As a matter of fact, I do not.

382 Q. Did you know that there were drafts being drawn right along, very frequently, between April 20th and October 3rd, by A. J. Gillespie & Company on Rappal, Sons & Company, all of which went to your bank for collection?

A. No, sir.

Q. You don't know that fact?

A. No.

Q. Do you know where F. J. Rappal, Sr., was between the dates just mentioned?

A. I know that he was at the yards a great deal, and I know he went frequently; would frequently leave there and return and tell

me he had been in the country; think he once said he had been in ——.

Q. Did you know of his being in Kansas City?

A. And at Kansas City some.

Q. You knew he was in Kansas City some during that period, did you?

A. I knew from what the boys would tell me occasionally and from what Mr. Rappal would tell me. I had that knowledge of it.

Q. But you don't know the fact that A. J. Gillespie & Company were drawing drafts of Rappal, Sons & Company through your bank, excepting these three, you say?

A. No; I did not. The reason of my not knowing it is that the matter of collections does not come—I don't give any attention, much, to the matters of collection unless something special happens that requires me to investigate.

383 Q. You don't know but what there was a very large number of drafts drawn between those dates?

A. There may have been.

Q. When did you first know that the draft dated September 30th, 1885, for $6,231.10, being Exhibit "D" in this litigation was not paid?

A. I should say Saturday, the 3rd of October, 1885.

Q. What part of the day Saturday?

A. I should say about midday.

Q. If that draft was received at the bank on Friday morning, October 2nd, 1885, and presented for payment and payment refused, was it or was it not the duty of your bank to have notified the Kansas City Stock-Yards Bank of its non-payment?

A. On that day, you mean?

Q. On that day—by telegram.

A. Such were the instructions.

Q. Such were the instructions?

A. Yes, sir.

Q. Then it was the duty, was it, of your bank to have notified the Kansas City Stock-Yards Bank of the non-payment of that draft on Friday, the 2nd of October?

A. Well, I think there are sometimes exceptions to that—sometimes when it wouldn't be the duty——

Q. How was it in this particular case? Was this an exception?

A. The reason that was not notified was the neglect of the collection teller.

384 Q. It was his duty, then, to have written such a dispatch, was it?

A. Yes, sir.

Q. And placed it before the——

A. Before our assistant cashier for signature.

Q. And that such dispatch would have been sent if it had been placed before the cashier or the assistant cashier, would it, in the regular course of business?

A. I presume, in this instance, they would have done so without

much doubt, but when a firm tells us to pay a draft to-morrow morning we seek to protect them and the interests of the drawers, too. I will say in explanation of my last answer that we don't aim to live up to any cast-iron rules when no one's interest will be prejudiced by being a little lenient or easy.

Q. Supposing some one's interests would be prejudiced, then what would you do?

A. Do anything that we ought to do.

Q. You don't always know just what is going on between the parties who draws the draft and the drawee of the draft in relation to the shipment of stock, do you?

A. No.

Q. Do you generally know?

A. No; but when a firm in which we had as much confidence as we had in Rappal, Sons & Company say that they will pay a draft the next morning we would hesitate somewhat before we would do anything to injure their credit. I should have known it
385 would not have injured Gillespie & Company, or prejudiced their interests to wait till the next morning for the payment of that draft. Understand I am not saying that is the reason that the non-payment of that draft was not telegraphed on the night of Friday, the 2nd of October, 1885. The reason it was not telegraphed was that the collection teller, as he has testified, neglected to attend to his duty.

Q. It might prejudice Gillespie & Company, might it not, if they had $19,000 worth of cattle which reached there Friday night and had not been sold, to have known of the non-payment of that draft on Friday night, might it not?

A. If the draft was paid the next morning it would not injure them an iota.

Q. If it was not paid the next morning or any other time it might have injured them, might it not?

A. It is possible.

Q. You say you know personally nothing of this $6,231.10 draft—of its non-payment—until Saturday about noon?

A. Not before that time.

Q. Did you know at that time that this draft, Exhibit D, had been presented to Rappal, Sons & Company and payment of it refused and the draft protested on Friday, October 2nd?

A. I presume I did.

Q. Who told you?

386 A. I presume it was Mr. Conrad. I remember I was told something about some draft that had not been——

Q. Did he give you any explanation of its non-payment?

A. I presume so.

Q. What did he say to you?

A. I don't remember what he said.

Q. If you knew on Saturday noon that the draft for $6,231.10 had been drawn by A. J. Gillespie & Company on Rappal, Sons & Company, through your bank, on Friday, the 2nd of October, and not paid and protested, would there exist any curiosity on your part——

A. If I was aware of what did occur in reference to the collection and advising — that draft, do you mean?

Q. Yes.

A. Might call it curiosity that excited an inquiry to find out why it was not notified.

Q. What I mean is this: If on Saturday noon you learned that this draft had been protested the day before, did it excite any curiosity in your mind as to why it was not paid?

A. No; I don't know that it would. Drafts are frequently presented and protested and held over night for the commission men to pay next day, and the next day no stock arrives, or some other reason, and they don't pay them, and they are returned.

387 Q. In this particular case the stock did arrive, didn't it?

A. I don't know.

Q. Didn't you get a deposit in your bank on the 2nd day of October—large deposit from Rappal, Sons & Company?

A. As a matter of fact, I can't testify from my recollection or knowledge; the records will show.

Q. That is already in evidence, what the facts are, isn't it?

A. I think so; regarding deposits every day, I think, right along there had been a deposit on Friday and Saturday both.

Q. You say it didn't excite any curiosity in your mind, the fact that so large a draft went to protest, drawn on Rappal, Sons & Company?

A. Yes, sir.

Q. Had you ever known any other draft on that firm to go to protest up to that Saturday noon?

A. I don't remember; very like; a good many of the drafts go to protest every day. A large portion of this stock is paid for before it gets to the yards.

A. I am asking if you know of any drafts drawn on Rappal, Sons & Company to have gone to protest?

A. I answered that. As a matter of fact, I don't remember of any other. What I was about to say would give — sort of an explanation to the answer. I know a great portion of this stock is

388 paid for before it gets to the yards, in advance, and I know that a great many drafts are drawn and reach here *are* are presented for collection before the stock gets here, and a good many commission men won't pay any drafts till the stock arrives. Drafts are protested and frequently sent back before the stock arrives.

Q. You don't know the fact, though, that in this particular case the stock had not arrived?

A. No; I don't know; didn't know there was any stock against it.

Q. Did you make any inquiry, when you learned that this draft was drawn, as to the reason why that draft was protested on Friday, the 2d of October?

A. I don't think I did make any inquiry; wouldn't necessarily excite my suspicion at all.

Q. You knew that Rappal, Sons & Company brought $22,000 into your bank that Saturday, didn't you?

A. I don't remember.

Q. You know now they did, don't you?

A. Well, I—no; I don't know now as a matter of fact. I scarcely know they ever deposited a dollar in there.

Q. If the testimony discloses the fact and your books show it and it is in the record here——

A. I have no doubt that there were deposits day after day there.

389 Q. Now, then, on Monday when you got there Mr. Conrad, the cashier, told you or called your attention to a draft for $19,505, drawn by A. J. Gillespie & Company on Rappal, Sons & Company, did he?

A. Well, he probably did when he told me of the financial state they were in. I probably made inquiry as to what there was there; what they proposed to do with the drafts.

Q. And you also knew there was a draft in the bank unpaid for $691.70, drawn by A. J. Gillespie & Company on Rappal, Sons & Company, didn't you?

A. If that was one of the drafts that came to hand Monday, I probably knew that.

Q. Well, your collection teller has testified that the $19,000 draft came in in the 8 o'clock mail Monday morning, and that the $691 came in in the 11 o'clock mail Monday; if that is true, those two drafts were there in your bank about the time you got to the bank, were they not?

A. Yes, sir.

Q. And Mr. Conrad called your attention to them?

A. Probably did. I can't say that he did, but he probably did, and I think so, because I know the report that he made to me would naturally excite my attention and be a reason for my investigating particularly and inquiring to know just the condition of things, and to know just the condition of things he should have told me about these drafts and probably did.

390 Q. And you also knew Saturday noon or thereabouts of the non-payment of the $6,231.10 draft?

A. I should say about noon, Saturday.

Q. When Mr. Conrad called your attention to the non-payment of this $19,000 and the $600 and odd dollar drafts did you look about to see how your bank stood with Rappal, Sons & Company?

A. Probably did.

Q. How did you find out?

A. I don't know that I did, but I probably did; would be a very natural thing for me to do, and naturally an easy thing for me to do would be to say, How do we stand, Conrad? or go to the balance sheet and see for myself.

Q. And you found that there was a 23 thousand and odd dollar deposit there on Saturday, which made your account good with Rappal, Sons & Company?

A. Probably did not; if I want to know how a man stands with the bank, I go to the balance sheet; if it is red figures the account is overdrawn; if it black, there is so much to his credit; that is all the balance sheet shows; the balance sheet don't show deposits.

Q. The figures had been in red ink in Rappal, Sons & Company's account most all the time for three months or four before that?

A. As I have testified I don't know about that; they were frequently overdrawn, and from our way of doing business were
391 as frequently entitled to overdrafts.

Q. When you looked at the account, then, on Monday noon you found that it was pretty nearly balanced?

A. I didn't say that I did look at the account Monday noon, but I say, from the report Mr. Conrad made to me, it would naturally excite my attention, and I should fell that it was necessary for me to inquire into the situation and to know the exact situation, and to know the exact situation it would be necessary for me to know how that account stood. Now, the natural and easy way to ascertain how their account stood would have been to say to Mr. Conrad how do they stand, or go to the balance sheet myself and see for myself the nature of what they owed us on bills receivable. I undoubtedly had — in my own mind then, because bills receivable is a matter that I look after more than anything else.

Q. What I am asking you is what you did do; whether you asked Mr. Conrad or whether you looked at the balance sheet.

A. I told you that I don't know. I said one or the other would be the natural way.

Q. I don't care anything about the natural way. I want to know what you did do, if you know.

A. I don't know. If I had answered your question the way you put it the inference would have been the same as though I
392 admitted that I went to the balance sheet and found out they made a deposit Saturday.

Q. Now, I ask you this question: Do you know—have you any recollection in your mind—know what you did do about Monday noon, October 5th, 1885, when you learned, as you say, that Rappal, Sons & Company were in a financial strait; have you any recollection of what you did do?

A. Yes, sir.

Q. What did you do?

A. I had a conversation with Lawrence L. Rappal——

Q. I mean with reference to the affairs in your bank with them.

A. I had a conversation with Lawrence Rappal——

Q. I am asking if you know what you did do about Monday noon, when you learned of Rappal's financial straits, with reference to looking or determining how your bank stood with Rappal, Sons & Company.

A. Yes, sir; I ascertained.

Q. You ascertained. Do you know how you ascertained it?

A. As I have said before, it must have been——

Q. Have you any recollection of how you ascertained, not what must have been? Do you remember now how you learned how those accounts stood?

A. No; I have not a distinct recollection now of what I did. I

want it understood that I say it was in one or two ways—from
393 Mr. Conrad or going and looking myself; that is all.

Q. Now, then, you called in the two younger men, F. J. Rappal, Jr., and Lawrence L. Rappal, into the bank that afternoon?

A. I don't remember whether I called them or whether they came themselves.

Q. You had a conversation with them in the bank, did you?

A. With one or both of them, in the bank or in their office or somewhere there.

Q. What is your recollection about it anyway—with one or both of them?

A. My recollection is it was both of them.

Q. What was the conversation; where was it?

A. In the bank.

Q. In whose room or office?

A. Either in the main room or in what is called the president's room.

Q. And who was present?

A. One or both of the boys—one or both of the two Rappal boys.

Q. And you asked them, did you, about the $7,000 note that your bank held against the firm?

A. Yes; I asked them what they would do about the payment of that note, because it was past due and we wanted it paid.

Q. Did you have any conversation with them in relation to their regular bank account or running account in the bank?

A. Don't remember that I did.

394 Q. Did you ask them why these Gillespie drafts were not paid?

A. I don't remember whether I asked them or not. I know I knew at the time why they were not paid; knew within those few days why they were not paid. I knew the reasons they gave.

Q. You knew the reasons they assigned?

A. Yes, sir.

Q. Do you know who composed the firm of Bowen & Company?

A. I know only what I have been told.

Q. Did you meet one of the firm of A. J. Gillespie & Company at your bank on Tuesday or Wednesday, October 6th or 7th?

A. I never saw either of the firm until the day I saw Mr. Gillespie with you, to my knowledge.

Q. That is the old gentleman?

A. Yes, sir; the old gentleman.

Q. You knew, didn't you, that one of the younger members of the firm of A. J. Gillespie & Company was at the stock-yards on either the 6th or 7th of October?

A. Well, about that time.

Q. And had a conversation with Mr. Conrad, the cashier?

A. Yes; I knew Mr. Conrad told me——

Q. And Mr. Conrad told you that Mr. Gillespie said that the money arising out of the sale of certain cattle, against which these drafts were drawn, belonged to A. J. Gillespie & Company?

A. Yes, sir.

395 Q. He stated that to you in substance, didn't he?

A. Yes, sir.

Q. Now, within ten days of that time, you saw A. J. Gillespie himself, from Kansas City, in your bank, didn't you?

A. I would think it was a longer time after that; wouldn't think it was earlier than December that I saw him there, but I don't remember now when it was; I wouldn't think it was earlier than December.

Q. On or about the 15th of October, 1885, did A. J. Gillespie call on you?

A. I can't remember when he called there with you. I remember one of them was——

Q. You are not prepared to say that was not the date, are you?

A. No; I wouldn't say it was not.

Q. He never called on you but once during that fall, did he—A. J. Gillespie?

A. Think I have never seen him but that time, in the bank.

Q. At that time A. J. Gillespie told you, didn't he, that his firm owned those cattle that were shipped, and that these drafts were drawn against their consignment of cattle to Rappals?

A. I don't remember that he stated that; might have inferred that from what he said; remember he said the bank had got his money.

Q. He told you that the proceeds of the cattle against which
396 these drafts were drafts were drawn had been deposited in the Union Stock-Yards National Bank?

A. I don't remember his saying that; I remember his saying the bank had got his money.

Q. Didn't he say the money had been deposited in your bank and he made demand for it?

A. I remember his saying the bank had got his money.

Q. And afterwards there was a written demand received by you within a day or two?

A. I suppose so—the necessary papers in a case of law.

The taking of further testimony is adjourned to Wednesday, December 1st, 1886, at 11 o'clock a. m.

397 DECEMBER 1ST, 1886.

ELMER WASHBURN recalled for redirect examination.

By Mr. BROWN: You testified in your direct examination and also in the cross-examination concerning an interview which you had with one of the firm of Rappal, Sons & Company upon Monday, October 5th, in the bank—that you sent for them. Have you refreshed your recollection in any manner concerning that?

A. I have.

Q. If you desire to amend your testimony, please do so.

A. I don't see as there is very much material difference whether I amend it or not. I believe I testified that I saw him in the bank or in the exchange building or in his office or somewhere about there, and that I thought it was in the bank. I don't remember

whether I sent for him or whether he happened in on his own account. Upon reflection, I am satisfied that I went to Mr. Rappal's office Monday, some time about noon, and saw there both of the boys, and Mr. Miller was there, and talked with them about their condition, and that one of the boys, I think Lawrence, was afterwards in the bank that same day.

Q. To see you?

398 A. Well, I don't know whether especially to see me or not, but I remember seeing him and having some conversation with him; may have come in to see me or about other business.

Q. I wish to ask you whether there is or not a custom, with which you are familiar on account of your position and duties, of drawing drafts with the bill of lading attached for collection through your bank for shipments of cattle.

A. Very little of it.

Q. Is it sometimes done?

A. You mean drawing drafts against cattle that are shipped to the yards or out of the yards?

Q. Drawing a draft against cattle shipped to the yards to the order of the shipper, and the cattle not to be delivered until the draft is paid.

A. It is the exception rather than the rule. I think I have known of such a thing being done.

Q. In that case the cattle would not be delivered until the bill of lading was obtained, I suppose; what is the fact about that?

(Objected to.)

Q. I will ask you this: Is it possible, under the rules of business as done at the stock-yards, for a shipper to ship cattle and to prevent their delivery except upon the payment of such drafts as he may draw against them?

(Objected to as a leading question by Mr. Bisbee.)

399 A. Is it possible for a shipper to ship stock to the yards and change their delivery?

Q. No.

(Question repeated.)

A. Live stock is shipped to the yards. The shipper sometimes bills it to himself. The bill of lading shows it is shipped to himself or to his own order. When shipped to his own order he will endorse it sometimes on the back, Deliver to Strahorn & Company, or Wood Brothers, or some other commission firm, and sometimes he will not endorse it, come with it himself, shipped to his own order, and when he gets there will decide who to turn it over to, but the great majority of stock I should say was shipped directly to some commission merchant there.

400 DECEMBER 1ST, 1886.

C. H. BEAN, being first duly sworn, testified on behalf of defendants as follows:

By Mr. BROWN: What is your full name?

A. Charles H. Bean.

Q. What was your business in September and October, 1885?

A. Clerk in the Stock-Yards post office.

Q. It has been testified here that mail left the Chicago post office in wagons for the Union Stock-Yards post office about half past three in the afternoon; what time did that mail reach the Union Stock-Yards post office?

A. 40 minutes past 4 in the afternoon.

Q. Letters which were found in that mail directed to the Union Stock-Yards National Bank would be delivered when?

A. The following morning.

Q. Suppose the mail arrived there Saturday afternoon, when would——

A. Be delivered Monday morning.

Cross-examination by Mr. BISBEE:

Q. How many deliveries a day are there at the Stock-Yards?

A. Four deliveries at the Exchange building; two deliveries outside.

Q. At the Union Stock-Yards National Bank, in the Exchange building?

401 A. Three daily.

Q. Three at the bank and four at the commission houses?

A. No, sir; altogether 3 deliveries made at the commission houses and three at the bank. Part of a delivery is made right adjoining the post office—makes four deliveries. The carrier that delivered there was a 4-trip carrier—delivered 4 trips—but didn't deliver in the Exchange building or the bank on the 4th trip.

Q. State what time these 3 deliveries were made during the day.

A. 7.30 in the morning, 10.30 the second trip, and the third delivery was 2.30 in the afternoon, and the 4th delivery was 4.30 in the afternoon.

Q. You say that last delivery—the 4.30—didn't reach the Exchange building?

A. No, sir; not that day.

Q. I mean during that day.

A. Yes, sir.

Q. That delivery went there at half past 7 in the morning?

A. Yes, sir.

402 DECEMBER 1ST, 1886.

GEORGE E. CONRAD, being first duly sworn, testified on behalf of defendants as follows:

By Mr. BROWN: Your full name is George E. Conrad?

A. George E. Conrad.

Q. You have been before sworn as a witness in this case?

A. Yes, sir.

Q. On that occasion produced by the complainants, I believe?

A. Yes, sir.

Q. And you then swore that you were the cashier of the Union Stock-Yards National Bank?

A. Yes, sir.

Q. How long have you been such cashier?

A. I can't give the exact time. I should think a dozen years.

Q. What are your duties as such cashier?

A. I don't understand exactly what you mean by that; of course I have charge of the bank—the business of the bank to manage.

Q. I want generally what the duties of a cashier are; that is all.

A. Looking after the general interest of the bank—the general business of the bank. All questions of importance are referred to me.

403 Q. What relative position do you occupy in the bank, to whom are you responsible, to whom are you second, if to anybody?

A. That is a question that never came up before. I suppose the officers of the bank are responsible to the board of directors. I belong to the board of directors myself.

Q. Is there any person in the bank, with the possible exception of the president of the bank, who has any more authority in the management of the business of the bank than yourself?

A. No.

Q. Then you and the president are responsible for the general management of the affairs of the bank, subject to the directors—the board of directors?

A. We are; yes, sir.

Q. Is it part of your duties as cashier to be acquainted with the business standing of the houses or individuals doing business with your bank?

A. Yes, sir; so far as we can gain that knowledge.

Q. And do you exercise a supervision of the books of the bank and the collections of the bank and other general business which they do?

A. Yes, sir; I do, so far as anything is referred to me.

Q. You have authority to interfere in any particular business of the bank?

A. Yes, sir; but in the ordinary details of the business the
404 different book-keepers in the different departments of the business manage the business themselves, unless something occurs that they don't understand.

Q. Are you acquainted with the firm of Rappal, Sons & Company?

A. I was acquainted with them when they were in business.

Q. You were acquainted with them about October 1st, and for some time before and after, were you not, in 1885?

A. Yes, sir.

Q. How long before that time were you acquainted with them?

A. Well, I had known them ever since they had been in business there, and F. J. Rappal for a number of years previous to that.

Q. F. J. Rappal, Sr.?

A. Sr.; yes, sir.

Q. Have they done business, during the time that they have been in business at the stock-yards, with your bank?

A. With us; yes, sir.

Q. What was the nature of their business with your bank; what were the relations between Rappal, Sons & Company and the bank; were they depositors?

A. They were depositors; yes, sir; kept an account with us.

Q. Did they borrow money of you?

A. My impression is they did; small amounts at different times; when they reported from day to day that they wanted to pay
405 drafts or make advances on cattle we allowed them to overdraw; that is a custom we have.

Q. How long has that custom lasted?

A. I think it has been the case ever since they were in business, at different times.

Q. Since you have spoken about overdrafts, I will ask you what is the custom of your bank concerning overdrafts?

A. We allow overdrafts to commission firms there, when they report to us why they want the money advanced, and it is either on stock in the yards or stock that will be in next day; it is only to carry them over night.

Q. What is the custom of your bank with relation to that which exists among other banks, in connection with overdrafts; do you know whether or not you——

A. Do you mean whether other banks do the same?

Q. Or whether you do it to any greater extent?

A. Our business is entirely different from any other bank in the city.

Q. Are you accustomed to allow more than other banks?

A. I presume we do, in proportion to the business we do, yes; our business is of such a nature that even the firms with the largest capital are obliged to ask overdrafts over night.

406 Q. You say that the account of Rappal, Sons & Company was frequently overdrawn, and it has been so testified; for what reason was that allowed—their particular overdrafts?

A. Well, it was on account of large shipments of cattle and other stock against which drafts were made and advances made by them, and the drafts, of course, coming be mail and the stock coming by freight, the drafts would get there first.

Q. You understood from them, then, that they were in need of money for a short period?

A. They reported to me every night, you know, why they wanted overdrafts; cattle were coming in, for instance, by the 15 or 20 carloads coming in one day, and they wanted to be overdrawn.

Q. When did you first know, if at any time, of any financial difficulty in which Rappal, Sons & Company were?

A. I think the first thing I heard or suspected anything was on Monday, October 5th, 1885.

Q. Before that Monday, October 5th, 1885, what was the standing credit of Rappal, Sons & Company with you?

A. We had always supposed, and the best information we could

get was, F. J. Rappal owned 60,000 dollars' worth of real estate in Will county, in Joliet and vicinity.

Q. I am not asking the reasons for their credit, but what
407 was their credit and standing with you?

A. Their credit was good, always has been good. Rappal has always had good credit, even when he had small amount of money in——

Q. If you had not learned, as you say that you did, upon Monday, October 5th, of their being in financial difficulty, and if it had not been for what you learned upon Monday, October 5th, would you have allowed them upon that day to overdraw, as you had previously *had* done?

A. Never should treated them and different from what they had before.

Q. Then you knew nothing up to Monday, October 5th, which would have prevented you giving them such credit as you would have done previous to that day?

A. No; I knew of nothing to change their standing at all.

Q. Now, what did you hear upon Monday, October 5th, respecting any pecuniary trouble, and how did you hear it? State it in detail, as much as you can.

A. My recollection is that some member of the firm came to me on Monday morning and said they were not going to pay the draft for $19,000.

Q. Had you before known of that draft for $19,000?

A. Not until some one called my attention to it and I went and looked the draft up. I think it came from one of the firm.

408 Q. You think that one of the firm came to you Monday morning; can you tell what time?

A. It was shortly after my arrival. I think shortly after 9 o'clock.

Q. So some one of the firm of Rappal, Sons & Company came to you shortly after 9 o'clock on Monday, the 5th of October, and said they were not—what did they say?

A. I can't give you just exactly what they said. They intimated to me that the $19,000 draft would be returned, the same as the other had been—same as the one on Saturday.

Q. Was that the first you knew of the $19,000 draft?

A. The first I knew.

Q. How did they describe that draft; what did they say about it?

A. Said there would be a large draft on one shipment of cattle, and they didn't intend to pay it. I immediately looked up the draft and found it was the $19,000, and I telegraphed the fact to Mr. Connelly at once—some time during the forenoon.

Q. Mr. Caldwell, the collection teller of the bank, has testified that you came to his desk, or came to him, and took that $19,000 draft. I will ask you whether you remember doing that?

A. I remember getting the draft. I don't remember whether I got it from him. I looked it up, wherever it was in the office, whether delivered to him, or the cashier had it among his open mail——

409 Q. And you did that, you say, in consequence of the information——

A. Information I had received, and I immediately got that draft and looked it up; then I telegraphed Mr. Connelly that the draft of Saturday would not be paid and the $19,000 one would go to protest.

Q. What did you do then besides that, if anything; to whom did you communicate the information you had received?

A. Don't think I said anything about it.

Q. Communicated it to Mr. Washburn, the president?

A. Mr. Washburn was not there, and I don't think I mentioned it to anybody or had any occasion to. They only said they were not going to pay it, and I telegraphed the fact to Mr. Connelly. That didn't make very much impression on my mind either. I thought it was some dispute between the firm, but later than that I received a telegram from Mr. Connelly asking to have the proceeds of the cattle deposited to his credit. Then I called on Rappal, Sons & Company again.

Q. When was that?

A. That was in the afternoon, after he had a chance to answer my telegram, I called on Rappal, Sons & Company. Then they told me they had no money from Bone & Company, I understood it; I never heard of the firm before; they said they had no money
410 from Bone & Company. The cattle had been sold on—I forget whether Friday or Saturday before, and the money was credited to Bone & Company's account.

Q. That is what they told you?

A. Yes, sir; and they said that Bone & Company—they were not going to pay the draft, because Bone & Company still owed them money. Then I immediately telegraphed that to Mr. Connelly; that the cattle had been sold on Friday or Saturday, I am not sure which, and the money credited on Bone & Company's account, and they refused to pay that draft.

Q. This draft was drawn A. J. Gillespie & Company; did they give you any information why that was done?

A. That I don't know anything about. I don't know anything about Bone & Company. I saw the draft was drawn A. J. Gillespie & Company; of course, I suppose it was some of Gillespie's business; that I didn't inquire about.

Q. But they told you that it was drawn?

A. On account of Bone & Company.

Q. And that that was going to whom?

A. And that they had credited the proceeds of the sale of the cattle to the account of Bone & Company.

Q. Was this the first that you knew, as you say, of any transactions between Rappal, Sons & Company and Bowen & Company?

A. First time I ever heard of Bowen & Company; I under-
411 stood Mr. Rappal to say Bone & Company, and it seems it should have been Bowen & Company.

Q. There was a deposit in your bank of some $23,000 upon Saturday, October 3rd, and upon the evening of that day Rappal, Sons

& Company—the evening of Friday, October 2nd—they were overdrawn to a large amount. I will ask you whether you knew upon Saturday of that deposit.

A. I did not; don't know anything about that. I should say as late as Thursday or Friday they asked me for an overdraft on account of some cattle that were to come. They had to make advances, and they reported so many cattle would be in next morning. After that they didn't ask for any overdraft, but I didn't know of any deposit being made. They made it in the usual course of business. We never examined their deposits.

Q. Made no arrangement or plan or——

A. Knew nothing about it; made in the usual way.

Q. Did they tell you where they were going to get the money to make that deposit?

A. When they requested an overdraft of a certain amount they gave me to understand that they had so many car-loads of cattle which would be there next day; so many from one point, so many from another, and that these they had advanced money on, and they needed so much to carry them through; that is all I
412 knew about it.

Q. Did they tell you from whom the cattle were coming?

A. They said usually there would be so many cattle from Quinlan——

Q. Did they say upon that occasion?

A. No; so many from Quinlan or different ones.

Q. Mr. Conrad, there has been put in evidence a draft of $6,231.10, which is marked Exhibit D; have you ever seen that draft before?

A. Yes, I have; that is the draft—first draft, as I recollect—which was protested on Rappal, Sons & Company.

Q. It appears to be protested upon October 2nd?

A. Yes, sir; Friday.

Q. When did you first know of this draft or see this draft?

A. Well, I should say Saturday morning about —; may have passed before my notice in the mail, probably not; Mr. Jameson usually opens the mail, but my attention was called to it on Saturday morning, say 10 o'clock.

Q. Saturday, October 3rd, 1885?

A. Saturday, October 3rd, 1885; first time I——

Q. How was your attention called to it?

A. I received, I think, a telegram from Mr. Connelly asking for a remittance on his account, to the Commercial National Bank
413 of Chicago, of some 20 thousand odd dollars, and I immediately looked over his collections that were in our hands on his account to see the amount that we had, whether we could make that, and I found that we had not enough money in, even if his collections were all paid, to make it, and I asked the collection teller if there was anything that hadn't been paid; then he called my attention to that draft; then I asked him if he had notified Mr. Connelly, and he didn't seem to know whether he had or not; he looked up his copy book and couldn't find any telegram, and I judged from the fact that Mr. Connelly asked for more money than

he had that he had not received it; so I immediately sat down and telegraphed that we had not funds enough to make the deposit and the Rappal draft had not been paid.

Q. Did you give any orders, implied or direct, that this should not be notified upon Friday?

A. No; I didn't know there was any such draft in our hands at all; gave no orders about it at all.

Q. Did you do anything to conceal from the Kansas City Stock-Yards Bank or any other person the non-payment of this draft at the time it was not paid?

A. No, sir; I was not aware that we had such a draft, and I gave no orders in regard to it, and didn't know we had it in our possession.

414 Q. What did you do or say, if anything, to the collection teller when you found that the non-payment had not been notified upon Friday?

A. Well, I called his attention to it and gave him orders when we had standing orders from a bank to telegraph and non-payment or non-acceptance; that he must carry those out, no matter who it hurt, whether—that was the orders, and they must be carried out to the letter, and when we come to look over his books he couldn't tell exactly whether he had telegraphed or not, but couldn't find any copy, and went and looked in the telegraph office and found there had been none sent.

Q. What effect did your finding that this draft had not been paid have upon your relation to the credit of Rappal, Sons & Company?

A. Not any at all. I supposed it was a difference in their—must have been some mistake in drawing the draft; don't think I asked them any reason for it at all.

Q. Did it occasion you to suspect upon that Saturday that Rappal, Sons & Company were in financial trouble?

A. No, sir; not at all. It frequently happens that drafts go to protest with the best firms.

Q. Don't drafts upon the best firms at the Stock-Yards frequently go to protest?

415 A. Certainly; make a mistake in drawing a draft sometimes, or the cattle don't agree; may have been remitted for. I asked no questions in regard to that; didn't think it of any importance.

Q. Did it have any effect upon your mind?

A. Not at all; not at that time; not until the following Monday, when I found they were going to let the other draft go back; then I thought there might be something.

Q. Now, I will show you this $19,505 draft, marked Exhibit E, and ask you when you first saw that or knew of its existence.

A. Well, I first saw that Monday forenoon, October 5th. I think it was 1885.

Q. Did you know of its existence before that time?

A. No, sir; I think not; never heard of it.

Q. Or knew there was any such draft, or any such draft to be drawn?

A. No, sir; never heard it mentioned before.

Q. There is the third draft which has been put in evidence here, which is marked Exhibit F. Do you remember that draft?

A. Yes, sir; I have seen the draft before. I think it came the same day; whether it was in the same letter as the $19,000 I don't know.

Q. You didn't see that draft before you saw the $19,000 draft, did you?

A. My impression is I saw them both together.

416 Q. You either saw them both together, or, if you did'nt see them both together, you saw the $19,000 draft first, did you?

A. My impression is that the $19,000 draft came in in the first mail, and this one —; the first mail comes in along between 7 and 8 in the morning, and I should say that one came in about half-past 10 o'clock mail.

Q. You are sure that you didn't receive this $19,000 draft in the mail upon Saturday, October 3rd?

A. No, sir; not even in the late mail.

Q. What is the latest?

A. We get a mail that comes in about 3 o'clock on Saturday; we close at one; but this letter came in in the Monday morning mail.

Q. Were you a party to any arrangement with Rappal, Sons & Company, any plan or connivance with Rappal, Sons & Company, by which the money coming to them upon any shipments of cattle made to them were to be applied to the payment of overdrafts to the Union Stock-Yards National Bank or to be deposited to their account in the Union Stock-Yards National Bank, or anything of that kind?

A. No; we never considered Rappal, Sons & Company owed us only over night for the advances which we made upon stock which was to be in next morning.

417 Q. Were you in any plan or connivance by which Rappal, Sons & Company were to give you money, the proceeds of certain shipments of cattle, and let drafts go back?

A. No, sir; never heard of such a thing.

Q. And do you know from what source the proceeds of what cattle deposited in that manner in your bank upon Saturday, the 3rd of October, or at any other time, were made?

A. No, sir; nor at any time; never asked them when they made overdrafts who the owners of the cattle were; we only knew they were making advances on certain shipments of cattle; never asked them who the owners were; didn't know; and when the cattle were sold didn't know who the owners were then.

Q. Do you know of anything in the treatment of these three drafts any different from the treatment of any other drafts in your bank received for collection, with the exception of the fact that the non-payment of this draft was not notified to the Kansas City Stock-Yards Bank until Saturday, October 3rd?

A. Those that were returned by the collection teller, he used his own judgment in treating those; no orders given any way.

Q. Do you know of anything unusual?

A. No; nothing unusual. The only thing out of the way was his neglect, his carelessness, in not telegraphing that one that

418 was done next morning.

Q. Did you attempt to treat those drafts in any different way from any others?

A. No, sir.

Q. Did you have any reason in your own mind——

A. No reason whatever, and no orders were given in regard to them by any one in the bank, so far as I know.

Q. So far as your knowledge extends, were orders of any kind or sort given by anybody.

A. No, sir; not by anybody else; don't know of any reason why they should be given.

Q. I call your attention to this point: I asked you to whom, if anybody, you communicated the information you got about Rappal, Sons & Company being in financial difficulties; did you during the day communicate to Mr. Washburn the fact?

A. My recollection is that I spoke to him as soon as he came up there. I presume his custom usually is to get there along about noon—some time between 11 and 12 o'clock.

Q. And you then told him what the Rappals, or some person from their firm, had told you?

A. Yes, sir.

419 Cross-examination by Mr. BISBEE:

Q. You knew did you, Mr. Conrad, on Saturday morning, October 3rd, 1885, that the draft in evidence, marked Exhibit D, drawn by A. J. Gillespie & Company on Rappal, Sons & Company for $6,231.10, and was presented for payment on Friday from your bank, went to protest on Friday and was unpaid on Saturday?

A. I knew Saturday morning, October 3rd, when I looked it up; I found that such a draft had been protested and was in our possession.

Q. I asked you if on Saturday morning, October 3rd, you knew that the draft I described was protested and was unpaid?

A. Yes, sir; I knew it Saturday morning.

Q. You knew that it had been presented on Friday morning to Rappal, Sons & Company for payment, didn't you?

A. No, sir; it was not presented on Friday morning. The drafts arrive during the early morning and middle of the day; they are not presented until about noon or a little after.

Q. Well, you knew it had been presented, then, about noon, or a little after, of Friday?

A. Yes, sir.

Q. Through your bank?

A. Yes, sir.

Q. It is the course of business, is it not, in your bank for

420 the mail to be opened by Mr. Jameson, the assistant cashier of the bank, and drafts that are contained therein for collec-

tion are taken by the collection teller, Mr. Caldwell, to present for payment, are they? That is the course of business?

A. Yes, sir; he enters them in his books and he gets them all in about noon or a little after, between 12 and 1 o'clock; he attends to them all.

Q. And then Mr. Caldwell makes reports to the various banks of the payment of non-payment of drafts, does he?

A. He writes the letters advising all of those that have been paid, and sometimes he don't mention those that have not been paid.

Q. If they are not paid he scratches off the draft from his letter?

A. Yes, sir; if he has it on the letter he scratches it off, draws a pen through it.

Q. Now, on Monday morning the draft for $19,505.62—I mean Monday morning, October 5th, 1885—was opened by the assistant cashier; was it in the early mail?

A. I presume it was; yes, sir.

Q. And went, in the regular course of business, to the collection teller, Mr. Caldwell, did it?

A. Yes, sir.

Q. And you went and got that draft from Mr. Caldwell on Monday morning, did you?

421 A. I got the draft in the middle of the forenoon, I think; I am not sure; I presume I got it off his desk as late as that.

Q. You remember the fact, don't you?

A. I don't remember where I got it, whether off his desk or off Mr. Jameson's; I presume Mr. Caldwell had entered it in his——

Q. You remember the fact of getting it?

A. I remember the fact of getting it.

Q. What did you do with it after you got it?

A. I got the draft and took the amount of it and telegraphed Mr. Connelly that it would not be paid, would go to protest.

Q. Have you a copy of that telegram?

A. If the book is here I could find it.

Q. You have just testified that you got this draft from Mr. Caldwell or from some one for the purpose of sending the telegram; that is the only purpose for which you obtained it, is it?

A. My attention was called to it by one of the firm telling me they would not pay it.

Q. That is not an answer to my question. I am asking if you got that for any other purpose?

A. I don't know what I might have done with it; I only got it to get the description of the draft, so I could give Mr. Connelly word it was not paid.

Q. That was the object of your getting it?

A. I wrote to him afterward and described it more fully.

Q. State what you recollect about it.

422 A. My main object was to get a description of the draft so I could notify Mr. Connelly at once; that was the only object I had.

Q. Then what did you do with the draft after that?

A. Placed it back with the note teller, so as to have it go through the regular course for protest.

Q. Carried it back to the note teller?

A. Yes, sir; it was given back to him; don't know whether I carried it back or sent it back.

Q. Do you remember doing that?

A. I remember it was sent back to the note teller.

Q. How long was it in your possession?

A. Long enough to get the description.

Q. About how long?

A. Might have been on my desk for half an hour.

Q. Not longer than that?

A. I should say not; no, sir.

Q. How long was it after October 5th before you saw any member of the firm of A. J. Gillespie & Company?

A. My recollection is that one of the younger members of the firm came there several days after. I can't give the dates; would be during the week.

Q. During that week?

A. I should say so.

Q. Of October 5th? Wasn't he there on Wednesday, October 7th?

A. Well, my recollection is it would be about that time;
423 couldn't say positively about that time.

Q. About Wednesday, October 7th?

A. He represented himself as one of the members of the firm. I never had seen him before.

Q. What did he say to you?

A. That I am not positive about. He was inquiring in a general way about Rappal, Sons & Company; all I remember.

Q. Didn't he say that the cattle that were shipped to Rappal, Sons & Company and received by them October 1st, 2nd, and 3rd were the cattle of A. J. Gillespie & Company?

A. I don't recollect of his saying that; no, sir.

Q. Do you recollect that he didn't say that?

A. I don't recollect of anything being said about the ownership of the cattle.

Q. Did he say anything about the proceeds of these cattle—who was entitled to it?

A. I don't remember that.

Q. Do you mean to say you don't remember what he said about it?

A. I don't remember distinctly what he said about it from this fact, that I told him I could give him no information about Rappal, Sons & Company; he would have to go to the office to get that from them. I had not seen Mr. Rappal then; he was in Kansas City, I think. F. J. Rappal, Sr., had made no inquiries of them.

Q. Your recollection is indistinct as to the conversation you had?

424 A. As to the details, I recollect he was in there and wanted

to know something about those drafts; he didn't seem to know very much about the drafts.

Q. State what was said.

A. I can't tell you exactly what was said, because there was nothing said that made an impression on me so that I should remember.

Q. So you don't remember?

A. I don't remember distinctly. I remember he was inquiring in a general way about the shipments; remember that some other point than Kansas City was mentioned, and his firm had asked him to look up here and see about it.

Q. Do you remember when A. J. Gillespie & Company commenced drawing drafts on the firm of Rappal, Sons & Company going through your bank?

A. No, sir; I do not.

Q. Don't you know, as a matter of fact, that between April 20th and October 3rd, 1885, A. J. Gillespie & Company drew a very large number of drafts on Rappal, Sons & Company, all of which went through your bank for collection?

A. No, sir; I do not. I know that A. J. Gillespie & Company draw drafts on probably a dozen different firms at the yards; sometimes on one, sometimes on another; sometimes on different ones at the same day.

Q. That is not what I asked you.

425 A. I will answer you.

Q. Did you know or did you not know that between April and October, 1885, A. J. Gillespie & Company drew drafts, more or less, upon Rappal, Sons & Company that went through your bank for collection?

A. I can't say that I did.

Q. You can't say that you knew?

A. No, sir.

Q. Can you say that you didn't know it?

A. Well, my impression is that my attention was never called to it particularly.

Q. Then you don't know that you ever knew the fact that any drafts were drawn by A. J. Gillespie & Company through your bank, presented and collected on Rappal, Sons & Company, between the dates above named?

A. I don't recollect of ever seeing or having my attention called to any particular draft, but I would say, as I said before, if you want me to now, that it was the custom of A. J. Gillespie & Company to draw on a great many firms, and I may have seen drafts drawn on Rappal, Sons & Company, but nothing to call my attention particularly to them.

Q. I am asking you if you have any recollection?

A. I hav-n't any distinct recollection of it—in fact, I knew nothing about the business—this Kansas City business—only that I knew Rappals were receiving cattle from Kansas City. I was not aware who was drawing drafts on them or in what way they

426 came; I supposed some shipments of cattle from Kansas City; my attention was never called to it particularly.

Q. Now, then, did you know of any drafts being drawn by A. J. Gillespie & Company on Rappal, Sons & Company, and presented through your bank, being protested until October 2nd, 1885?

A. No, sir; I did not.

Q. Did you know of any one up to that time drawing drafts on Rappal, Sons & Company being protested?

A. I can't say whether I did or not.

Q. Have you any recollection of it now?

A. No; I have no recollection—no recollection.

Q. You hav-n't any such recollection?

A. No. Nothing occurred to call my attention to anything of that kind.

Q. Now, when did you next hear from Mr. Gillespie, after the 7th day of October, or from any member of the firm of A. J. Gillespie & Company?

A. I don't recollect the dates. Mr. Gillespie has been at the bank a number of times. I don't recollect the dates.

Q. Was A. J. Gillespie himself, the senior member of the firm, at your bank on the 15th day of October, 1885?

A. That I cannot say. He was there several times shortly after the——

Q. You have no recollection of his being there?

A. Not as to the dates.

427 Q. Have you within two or three days of that time?

A. Not as to dates.

Q. No recollection as to dates at all?

A. Not as to the dates; no, sir.

Q. Do you remember of A. J. Gillespie's coming into your bank on the 15th day of October, 1885, and telling you that his firm shipped these cattle to be sold on commission by Rappal, Sons & Company and the proceeds accounted for to them?

A. No, sir; I don't recollect. I had several conversations with Mr. Gillespie when he was up there.

Q. Do you recollect of his coming there on that day and telling you that the money, about $25,000, that was deposited on the 1st, 2nd, and 3rd of October, 1885, by Rappal, Sons & Company was the money of A. J. Gillespie & Company?

A. I remember his coming there, and he claimed to have some interest in the cattle; farther than that I don't remember.

Q. Didn't he tell you that his firm paid for those cattle and owned them and was entitled to the proceeds?

A. I don't remember his telling that.

Q. Will you say he didn't tell you that in substance?

A. I don't remember of his telling me that.

Q. You are not willing to say he didn't tell you that?

428 A. Of course, I say that I don't remember of his telling me that his firm paid for the cattle or that they didn't pay for them. I remember that he put in some claim or pretended to have some claim upon the cattle, and I recollect, farther than that, of going to Rappal, Sons & Company and asking them about it, and

they produced the ticket when the cattle were all weighed to Bowen & Company.

Q. I am not asking anything about that. I am asking if you remember, Mr. Conrad, that Mr. Gillespie did or did not tell you, on the 15th of October, 1885, that his firm paid for those cattle and shipped them to Rappal, Sons & Company to be sold and the proceeds accounted for by them, and that they drew these drafts on them.

A. I have no recollection of any such——

Q. You don't remember any such conversation?

A. No, sir.

Q. On the 15th of October or thereabouts?

A. No, sir; I don't recollect the conversation.

Q. Do you remember who was with A. J. Gillespie when he called there about that time?

A. No; I do not.

Q. You don't remember who was with him?

A. I don't remember who was with him.

Q. Do you remember of receiving a letter on October 16th, signed by A. J. Gillespie & Company, in relation to the proceeds of these cattle?

A. No, sir; I do not.

429 Q. You don't remember any such letter as that?

A. No, sir. If there was any such letter received we have it on file, I presume.

Q. You have no recollection about it?

A. No recollection of it.

Redirect examination:

Q. When you receive drafts for collection at the stock-yards, at your bank, do you identify them by the name of the drawers—make any particular impression upon you or not?

A. We get, I was going to say, many hundreds of drafts a day, and all the attention we pay to them *if* to take the letters of the bank that sends them and check over the amounts to see if they are right; don't look to see who signs the drafts or who draws them; have enough to do to check over the amount to see if every draft is there.

Q. You would not, therefore, as I understand you, keep track of persons who were drawing upon any particular firm?

A. No, sir; don't pretend to; don't pay any attention to that at all; haven't got time.

Q. In your testimony given before you stated that your attention was called to the $19,000 draft upon Monday by receiving early Monday morning a telegram from Mr. Connelly asking you if the 19 thousand and odd dollar draft—on Monday morning a telegram was received, which was received some time before noon, you

430 said your recollection was then, and you named 10.36 as the time of day when it was sent from Kansas City, asking whether the Rappal $19,000 draft was paid. Do you now remember receiving that?

A. I don't remember receiving it; I think I received 2 telegrams

from Mr. Connelly that day, one asking if the draft had been paid and another asking me to secure the cattle or proceeds or something of that kind for him.

Q. Was the reception of that telegram before or after you received from Rappal, Sons & Company the information which you have told?

A. I should think it was about the same time that the first one came.

Q. Is it or not possible that the telegram which has been produced by Mr. Connelly, signed Jameson, assistant cashier, might have been sent at your directions?

A. He might have received the telegram and put that answer on before I got there in the morning, and then the other one was——

Q. But the telegram doesn't appear to have been sent till later—half-past ten—the first telegram from Mr. Connelly?

Q. Then I was there to get that, of course.

Q. Is it not possible that after receiving the information from the Rappals the telegram signed by Jameson was sent at your request?

431 A. Mr. Jameson may have sent the first one; I don't remember in regard to that; I should say he sent the first one, and then that I inquired more fully into it and answered the——

Q. It is signed Jameson, cashier; may it not have been sent by your direction?

A. It may have been; I don't remember about that; have no recollection of that; didn't know until to-day that such a telegram was sent.

Q. Is the amount of $19,000 an unusually large amount for your bank to receive as a draft for collection?

A. No, sir; it is not; very ordinary.

Q. Is $6,000 an ordinary or very large draft for collection in your bank?

A. No, sir; on those large shipments $25,000 and 30,000 is not an unusual draft to have.

Q. You don't remember that Mr. Caldwell testified yesterday that after you took the $19,000 draft from his desk he didn't see it again at all; it was not returned to him; that you took charge of it. You have testified that you turned it over again to him. Can you explain that apparent discrepancy?

A. I am not positive what was done with the draft except that it went through the regular course of business, being presented and not paid and turned over to Mr. Jameson to protest.

432 Q. Then it may not have been turned over to Mr. Caldwell?

A. May not have been turned over to Mr. Caldwell direct; that would be the natural course for it to take, but as they had positively said that it would not be paid, it may have been turned over direct to the notary.

433 DECEMBER 1ST, 1886.

F. J. RAPPAL, Sr., being first duly sworn, testified on behalf of defendants as follows:

By Mr. MILLER: Give your name in full.

A. F. J. Rappal, Sr.

Q. Are you one of the defendants in this suit?

A. Yes, sir.

Q. What has been and is now your business?

A. Cattle in stock-yards; selling on commission.

Q. How long have you been at the stock-yards in the commission business?

A. Been 4 years the first day of next January.

Q. Where before that time?

A. Joliet, Illinois; Will county.

Q. State whether or not you were doing business in Kansas City, Missouri, during the year 1885—say, from the middle of March up to some time in October of that year.

A. Yes, sir.

Q. With whom, if anybody, were you associated in business there?

A. W. P. Bowen, Milton James, and myself.

Q. What was the style of the firm in which the three named were partners?

A. W. P. Bowen & Company.

434 Q. Previous to your forming that arrangement with Mr. Bowen and Mr. James, had you known Mr. Bowen?

A. Slightly; not much.

Q. Had he had any business with the firm of Rappal, Sons & Company?

A. He shipped a few different kinds of cattle to us at the stock-yards here.

Q. What was the business of Bowen and Company?

A. Buying cattle and shipping.

Q. Do you know the firm of A. J. Gillespie & Company?

A. Yes, sir.

Q. The complainants in this suit?

A. Yes, sir.

Q. Did the firm of Bowen & Company, which you have mentioned, have any business transactions with the firm of A. J. Gillespie & Company, at Kansas City, during the time you have mentioned?

A. Yes, sir.

Q. What arrangement, if any, had the firm of Bowen & Company with the firm of A. J. Gillespie & Company in reference to the shipment of cattle to Chicago?

A. Bowen & Company bought the cattle; made arrangement with A. J. Gillespie & Company—it was the old gentleman—I think it was the old man—to advance the money for those cattle that Bowen & Company bought, and shipped the cattle to Chicago; and they were to have $2.50 a car for compensation.

435 Q. Compensation for what?

A. Advancing the money for the cattle and shipment.

Q. During the part of the time to which you have testified, between April 20th and some time in October, were they paid a larger or less sum for advancing the money and shipping the cattle?

A. They were paid at one time $5 a car.

Q. With whom did the firm of Bowen & Company make the arrangement that you have testified to with A. J. Gillespie & Company—that is, with what member of the firm?

A. The old gentleman, A. J. Gillespie, I think is his name.

Q. Did you ever have any conversation with reference to this arrangement which you have testified to or any arrangement with A. J. Gillespie & Company or any other member of the firm?

A. No, sir.

Q. Any time or place?

A. No, sir.

Q. At the time you made this arrangement that you have testified to with A. J. Gillespie & Company to advance to Bowen & Company money for the purpose of purchasing cattle, and you have testified to the compensation they were to receive for so advancing money and shipping these cattle, how were A. J. Gillespie & Company to be reimbursed for these advances?

436 A. I, as a member of Bowen & Company, made the arrangement with A. J. Gillespie to draw on Rappal, Sons & Company for the advance of this money.

Q. Did the firm of Bowen & Company keep any office at Kansas City of its own?

A. Bowen & Company?

Q. Yes.

A. No, sir.

Q. Where did you have your headquarters?

A. At A. J. Gillespie's most of the time.

Q. State whether or not you or Mr. Bowen knew anything about keeping books?

A. I didn't; I don't know as Mr. Bowen did; never kept them.

Q. Now, then, the arrangement, if any was made, with reference to keeping the account between Bowen & Company and A. J. Gillespie & Company. What was the arrangement; who made it, &c.?

A. The arrangement was they were to keep the books, as I stated before, for the $2.50 a car or $5, in the first place, and a different arrangement afterward; keep the books, ship the cattle for Bowen & Company, advance the money for the sum of $2.50 a car, the last 6 weeks or so.

Q. Then do I understand you to say the monies advanced by A. J. Gillespie & Company for the purchase of these cattle was a loan to Bowen & Company?

A. To Bowen & Company; yes, sir.

437 Q. Did — ever have any conversation with T. E. Gillespie, the son of A. J. Gillespie, in which you told him what the arrangement between his father & Bowen & Company was?

A. Not any.

Q. I desire to call your attention to certain parts of the testimony of A. J. Gillespie, one of the complainants in this suit. On direct examination Mr. Bisbee asked A. J. Gillespie this question:

"Did you make any arrangement with Mr. Rappal, Sr., to do any business for him in behalf of your firm in April, 1885?"

The answer was: "I think it was in April; I couldn't say when the exact date was."

"What was the business arrangement?"

To which question Mr. Gillespie gave this answer: "He came from Chicago here and came to me and said he wanted to buy and ship some cattle to his house, and he wanted to make arrangements for me to pay for the cattle and forward to them. We made an arrangement. He was to buy the cattle; we were to pay for them and forward them to his house in Chicago. We were to draw sight drafts against the cattle to get our money out of them, and
438 we were to hold the cattle as ours until the drafts were paid."

Now, Mr. Rappal, I desire to ask you if you, at the time specified by Mr. Gillespie or any other time, ever made any such arrangement with the firm of A. J. Gillespie & Company.

A. No, sir.

Q. Then I understand you to say that you never made an arrange- with A. J. Gillespie & Company by which you were to buy cattle, A. J. Gillespie and Company were to pay for them and draw on Rappal, Sons & Company for the cost, and that the cattle were to be the cattle of A. J. Gillespie & Company until the drafts were paid?

A. Never was mentioned.

Q. Mr. Gillespie further testified that these cattle that were shipped between the dates mentioned—the middle of April and, say, the 7th of October—were turned over to Rappal, Sons & Company, and then the question was asked:

"For what purpose were they turned over to Rappal, Sons and Company?"

The answer was: "To be sold on commission.

"Q. For whose account?"

To which Mr. Gillespie answered: "If their drafts were paid the cattle would be theirs. As soon as we got our money we had no further interest in them."

439 Q. And if the drafts were not paid?

A. The property was ours. We would draw a draft for the amount of the indebtedness every night, and in case the drafts were not paid the cattle belonged to us.

Mr. Rappal, was there any arrangement between Bowen & Company and A. J. Gillespie & Company, or between you individually or as a member of the firm of Rappal, Sons & Company, by which these cattle shipped between the dates mentioned, including the cattle in controversy in this suit, were to be the cattle of A. J. Gillespie & Company until the drafts were paid?

A. Never was mentioned.

Q. This question was also asked Mr. Gillespie: "State how it was about the cattle being subject to your order until they were sold."

To which Mr. Gillespie answered: "I made an arrangement with Mr. Rappal that we were to hold the cattle until we got our money." Did you make such an arrangement with Mr. Gillespie as he has testified to here at any time?

A. No, sir.

Q. The following question was also asked Mr. Gillespie:
440 "State why that account was kept in the name of Bowen & Company; who directed it to be done?" To which question Mr. Gillespie answered: "Mr. Rappal said he didn't want the commission men to know he was shipping cattle, and that he had a man by the name of Bowen with him and he wanted the cattle handled in that name to keep it separate and to keep people from knowing that Rappal, Sons & Company were shipping cattle."

Mr. Rapple, did you ever have any such conversation with A. J. Gillespie, or any member of his firm, such as he testified to here?

A. No, sir.

Q. Did you ever make any such statement to him as he makes here?

A. No, sir.

Q. Did you ever tell him that Bowen & Company meant Rappal, Sons & Company, or words to that effect?

A. No, sir.

Q. You have heard the testimony in this case in reference to the shipment of 3 lots of cattle—133 head, 815 head, and 122 head of cattle—which were shipped from Kansas City to Chicago, to Rappal, Sons & Company, between the 29th of September, say, and the
441 6th of October, 1885. Do you know to whom those cattle belonged?

A. Yes, sir.

Q. To whom did those three lots of cattle belong?

(Objected to by Mr. Bisbee as calling for a conclusion by the witness.)

(Question withdrawn.)

Q. Do you know who bought the 133 head of cattle, to which reference has been made in the testimony, that were shipped on or about October 2nd, 1885, to Chicago?

A. I bought them; me and Mr. Bowen together. I really bought the cattle. I made really the final close on them.

Q. You bought these cattle of A. J. Snider & Company?

A. Yes, sir.

Q. For whom did you buy them?

A. W. P. Bowen & Company.

Q. Do you know who bought the 810 head of cattle shipped from Kansas City to Chicago on or about the 1st of October, 1885?

A. Mr. Bowen and Mr. James bought them. I was not there that day.

Q. How do you know they bought them?

A. Well, when I got back in the evening they told me they bought so many Texas cattle.

442 Q. Do you know who bought the 122 head of cattle shipped afterwards and to which reference has been made in the testimony?

A. About a day or two afterwards I bought 80-odd and I think Mr. Bowen bought the balance, odds and ends.

Q. For whom were the 810 and the 122 head of cattle bought?

A. For W. P. Bowen & Company.

Q. My questions have reference to the three lots of cattle in controversy in this suit. Do your answers apply to those three lots of cattle?

A. Yes, sir.

Q. You have testified to an arrangement made by you, on behalf of W. P. Bowen & Company, with A. J. Gillespie & Company in the early part of the summer of 1885. Did you tell your sons, F. J. Rappal and L. L. Rappal, about that arrangement?

A. Yes, sir.

Q. Did they know that you were a member of the firm of W. P. Bowen & Company?

A. Yes, sir.

Q. Did you ever at any time tell A. J. Gillespie & Company that you were buying these cattle for Rappal, Sons & Company?

A. No, sir.

443 Q. Do you remember an interview at the Palmer House, in Chicago, on the 15th or 16th of October, 1885, at which yourself, F. J. Rappal, Jr., L. L. Rappal, and A. J. Gillespie were present?

A. Yes, sir.

Q. Whereabouts in the Palmer House was that interview held?

A. Well, it was right this end of the stairs, just in the main hall—just this side of the——

Q. The rotunda?

A. Yes, sir; around there.

Q. About what time of the day was that interview held?

A. I think somewhere along in the afternoon; couldn't exactly say what time it was, but I think, to the best of my knowledge, in the afternoon—middle of the afternoon somewhere.

Q. In that conversation had between Mr. Gillespie, your two sons, and yourself, did Mr. Gillespie suggest a plan by which this money could be got from the bank?

A. Yes, sir.

Q. Please state the proposition he made to you at that time.

A. He said like this: You call them cattle mine, and I am willing to stand the loss and let the bank lose the money instead of me. That is the very words he used.

444 Q. You may repeat that conversation which you had with Mr. Gillespie at that time that you have reference to, when your two sons were present, at the Palmer House, as near as you can, giving what Mr. Gillespie said and what you said, stating it as fully as you can, and give the words, as nearly as you can, that were used by yourself and Mr. Gillespie.

A. Just as I stated. Says he, Call those cattle my cattle, and I am

willing to stand the losses and the bank will have to stand the loss instead of me. That is just the words. I didn't say anything. Says he, You call those cattle mine and I am willing to stand the loss of these cattle and get the money. Let the bank lose it instead of me.

Q. What did you say?

A. I said nothing.

Q. Who asked you to come to the Palmer House for that interview?

A. Mr. Gillespie.

Q. Who else were present at that interview?

A. Me and my two sons.

Q. Was anybody else there during any part of the interview?

A. Not at that time. Mr. Gillespie was there at one time and Mr. Miller was there pretty near that time.

Q. Did your two sons hear this conversation?

445 A. They were there at the time.

Q. You have testified to an arrangement made by W. P. Bowen & Company with A. J. Gillespie & Company in April, 1885; was that arrangement changed from that time up to the 5th or 6th of October?

A. No, sir.

Q. No other arrangement between you and A. J. Gillespie & Company?

A. The arrangement was one time we paid them $5 a car and then we made an arrangement of $2.50; that is all the arrangement ever was made between W. P. Bowen & Company and A. J. Gillespie & Company.

Cross-examination by Mr. BISBEE:

Q. When did you say you left Joliet and moved to Chicago?

A. Will be 4 years the first day of January, coming 1881; I think it was 4 years come first day of January I started in business here in Chicago.

Q. You were acquainted with Mr. Elmer Washburn in Joliet?

A. Yes, sir.

Q. When he was the warden of the penitentiary?

A. Yes, sir.

Q. You had business relations with him then?

A. I furnished beef there at the penitentiary occasionally, and different stuff, more or less.

446 Q. What business were you engaged in?

A. I was then keeping a meat market and shipping cattle.

Q. At Joliet?

A. Yes, sir.

Q. How long had you been engaged in that business there?

A. Twenty-odd years; I was in the meat business 12 years; in the cattle business before that 12 or 15 years.

Q. When did you make the acquaintance of Mr. Bowen?

A. Along in April, 1885.

Q. Had you never seen him up to that time?

A. He shipped stock to us in the Union Stock-Yards a few different times; that is how I come to learn his name, and so on.

Q. You went to Kansas City in April, 1885, didn't you?

A. Yes, sir,

Q. For the purpose of buying cattle and shipping to Chicago?

A. I expect so; yes, sir.

Q. That was the object of your visit there, was it?

A. Yes, sir.

Q. You remained there the greater part of the time up to October, 1885?

A. Yes, sir.

Q. And during that time, between April and October, you
447 bought a great many cattle at Kansas City, didn't you?

A. Yes, sir; Bowen & Company bought a good many cattle there during that time.

Q. Did you buy any cattle during that time at any other place than Kansas City?

A. No, sir.

Q. Did you make any written copartnership with Mr. Bowen?

A. I did not.

Q. Have any writings?

A. Guess not; no, sir.

Q. Where did Mr. Bowen live?

A. He lived over in Kansas, about 40 miles from there; I forget the name of the place.

Q. You don't know where he lived?

A. He lived at Indianola; it is off some 40 miles or so.

Q. What was Milton James' business when you went down to Kansas City, in April, 1885?

A. He was there selling cattle.

Q. For his own account?

A. No; I believe he was working for Gillespie, if I am not mistaken.

Q. In the employ of A. J. Gillespie & Company?

A. I think so; at the same time he bought cattle.

Q. Did you have any writings with him at all?

A. No, sir.

448 Q. It is true, isn't it, that in some lots of cattle that you bought, Milton James had an interest in the proceeds, if there was any, and in some lots he didn't have an interest?

A. He had an interest in some of the cattle there; guess he was out for about, perhaps, 3 or 4 weeks during July. I think, then, in August he went in again and stayed till we quit, till W. P. Bowen & Company dissolved.

Q. Then, you say Mr. James was interested in all the cattle you bought up in July?

A. Well, not all, sir; biggest portion of them; sometime-, perhaps, 4 to 6 weeks' time——

Q. Interested in a portion of what you bought?

A. He was in for about 4 to 6 weeks, I think, to the best of my knowledge, all we did buy.

Q. He was interested in all you bought?
A. Yes, sir; one-third interest.
Q. One-third interest in the profits?
A. And losses—same thing.
Q. Did he have any money to put in?
A. I don't know how that was, I am sure.
Q. Did he put any into the firm of W. P. Bowen & Company?
A. He did not; no, sir.
Q. Did Mr. Bowen put in any?
A. I expect he did.
Q. How much?
A. Mortgaged his farm for $3,000.
449 Q. Mortgaged it in October, after these drafts went to protest, did he?
A. No, sir; before.
Q. Did he put any money into the business.
A. I don't know as he did have no——
Q. Did you ever know of Mr. Bowen's putting a dollar of money——
A. I don't think he did; not to my knowledge. He had some credit there, I suppose.
Q. If Mr. James or Mr. Bowen ever put any money in the business of shipping cattle in the name of W. P. Bowen & Company state what they put in and how much.
A. I don't know that they put it in or how much or anything about it.
Q. Did you know of their putting a dollar in, either of them?
A. I don't know; couldn't say. Gillespie & Company kept the books of W. P. Bowen & Company.
Q. Did you put any money into the business of W. P. Bowen & Company?
A. No, sir; not any then.
Q. Not any?
A. No, sir.
Q. You never stated to any one, you say, that you little rather the commission men at the stock-yards in Chicago would not know you — buying cattle; you never said that to anybody, did you?
A. Not that I know of; no, sir.
Q. You say you never stated you little rather the commis-
450 sion men at the Union Stock-Yards would not know you were shipping cattle.
A. No, sir.
Q. You never said that to anybody?
A. Not that I know of.
Q. Not that you remember of?
A. No, sir.
Q. You would be likely to remember it if you ever said that, wouldn't you?
A. I might; not to my knowledge, I hav-n't.
Q. Do you know how many cattle or how many car-loads of cattle

were shipped from Kansas City to the firm of Rappal, Sons & Company between April 20th, 1885, and October 1st, 1885?

A. I do not; no, sir.

Q. By W. P. Bowen & Company?

A. I couldn't say.

Q. Have you any idea how many?

A. Might have been 1,200 or 1,500 cars. I couldn't say positively.

Q. The system of doing business was, wasn't it, for A. J. Gillespie & Company to pay for such cattle as you bought down there at Kansas City?

A. That was the agreement with W. P. Bowen & Company.

Q. That they should pay for them, wasn't it?

A. They was to get $2.50 a car——

Q. I am not asking about paying; for instance, you bought
451 some cattle of Snider down there; how would Snider be paid?

A. By the contract Bowen & Company made with Gillespie & Company to advance the money for those cattle——

Q. Gillespie & Company would pay Snider & Company for the cattle, wouldn't they?

A. According to the contract with Bowen & Company——

Q. I am talking about the fact, not the contract. I ask you if in such a case Gillespie & Company would give their check to A. J. Snider & Company.

A. According to the contract Bowen & Company had——

Q. I am asking you if such was the fact—did Gillespie & Company give their check to A. J. Snider & Company in payment of the cattle?

A. They did, according to the contract Bowen & Company had with Gillespie——

Q. I didn't ask you anything about the contract. I ask you how the cattle were paid for—if by the check of A. J. Gillespie & Company.

A. Well, as I said, they advanced the money to W. P. Bowen & Company for the cattle.

Q. Now, then, when you bought for yourself at Kansas City about 10 cars of cattle of A. J. Snider & Company you reported that fact to A. J. Gillespie & Company, didn't you?

A. Yes, sir.

452 Q. A. J. Gillespie & Company then drew their check payable to A. J. Snider & Company in payment of those cattle?

A. I don't know how they drew the check.

Q. You don't know about that part of it?

A. No, sir.

Q. And then the cattle were shipped to Chicago by A. J. Gillespie & Company, were they?

A. No, sir. They were billed W. P. Bowen & Company, on account of A. J. Gillespie & Company, to Rappal & Company.

Q. You mean to say that was done in all cases?

A. Yes, sir.

Q. Now, Gillespie & Company would draw a draft on Rappal,

Sons & Company for the amount of money they paid out, would they?

A. In the neighborhood of that, I suppose.

Q. That is the way the business was done? I believe you testified that you bought the 133 head of cattle that — shipped on the 30th day of September of A. J. Snider & Company, didn't you?

A. Me and Mr. Bowen bought them together. He was there at the same time.

Q. You and Mr. Bowen were together?

A. Yes, sir.

Q. You agreed to pay A. J. Snider & Company $6,506.40, did you?

A. Well, I didn't figure the cattle at all.

Q. Do you know whether that is right or not?

453 A. I never kept the books. I suppose it must be if it is figured that way.

Q. You hav-n't any doubt but that is correct?

A. I suppose it must have been.

Q. Did you report the fact that you had made a contract for these cattle of Snider & Company to A. J. Gillespie & Company?

A. Mr. Bowen always "O K'd" the ticket; took them and "O K'd" them himself and sent them to the office.

Q. And you sent them to A. J. Gillespie & Company?

A. Yes, sir.

Q. Take that identical lot of cattle—is that the check, Exhibit 1, to T. E. Gillespie's testimony, that paid for these cattle?

A. I couldn't say.

Q. Read it and see what you think about it.

A. It is very likely; but I couldn't swear to it.

Q. Exhibit 1 to T. E. Gillespie's testimony—is that the check that was drawn by A. J. Gillespie & Company and paid for that lot of cattle?

A. I couldn't say.

Q. You don't know?

A. I didn't keep the books? didn't know anything about it.

Q. Did you pay A. J. Snider & Company any money for those cattle?

A. No, sir; I did not.

Q. Did Mr. Bowen?

454 A. They were weighed to Bowen & Company; he took the ticket from the scales and he "O K'd" it—sent the price of it; Bowen & Company didn't pay for those cattle, I don't suppose, because it was an arrangement between Bowen & Company and Gillespie & Company to pay for those cattle and they got a compensation of $2.50 a car for advancing the money.

Q. You hav-n't any doubt, have you, but what the check that you hold in your hand is the identical check drawn by A. J. Gillespie & Company and by them turned over to A. J. Snider & Company in payment of that lot of cattle?

A. I don't know whether it is or not, for I have known them to make out a check——

Q. Have you any doubt about that fact?

A. I hav-n't; no, I don't know; I couldn't say.

Q. Where were those cattle when A. J. Gillespie & Company gave them that check for the cattle or paid for them?

A. That is something I don't know—whether the cattle were shipped out before they were paid for or not; that is something I couldn't say. Sometimes the cattle are weighed and go right out before the ticket goes to the office.

Q. Then, as a matter of fact, you don't know just where the
455 cattle were at that moment?

A. I saw the cattle when Bowen & Company bought them, and saw them weighed. Sometimes they changed them into different yards.

Q. 133 head of cattle would be 7 car-loads?

A. Yes, sir; just about.

Q. You knew, didn't you, Mr. Rappal, that at the time A. J. Gillespie & Company paid for these 7 cars of cattle—paid Snider & Company for them—Snider & Company gave an order of this kind: Stock-yards, Kansas City, Mo., September 30th, 1885. Directed to the Union Stock-Yards Transit Company, U. S. Yards, Ill. Please deliver A. J. Gillespie & Company 7 cars of cattle shipped via C. & A. railroad, consigned for Drum. Signed A. J. Snider & Company. You knew that Snider & Company gave that kind of an order to Gillespie & Company, didn't you, for those cattle?

A. I didn't know how they had fixed it.

Q. Didn't you know that such an order was given on these identical cars from Snider & Company to Gillespie & Company?

A. I didn't at the time, because I didn't pay any attention to the books whatever or to the business; didn't keep any account
456 books. I am no book-keeper whatever.

Q. You know now, don't you, that such an order was given by Snider & Company to A. J. Gillespie & Company at the time he paid for the cattle?

A. I suppose if you have it there it shows it. I didn't know at the time.

Q. You think so, don't you?

A. I expect so by the looks of it.

Q. It is true, isn't it, that these cattle, if they were in the stock-yards at Kansas City, would be loaded on cars—say, Chicago & Alton or Hannibal and St. Joe cars, whichever it might be—and shipped out to Chicago; that is true, isn't it?

A. I suppose so.

Q. And those cattle were shipped in the name of A. J. Gillespie & Company, were they?

A. W. P. Bowen & Company, on account of A. J. Gillespie & Company.

Q. Now, for instance, on the back of the order that I read to you are these words: "Deliver to Rappel, Sons & Company. A. J. Gillespie & Company."

A. The cattle were bought——

Q. I am asking you, don't you know that there was an order given by A. J. Gillespie & Company, on the back of the one that Snider &

Company gave Gillespie & Company, turning these cattle over to Rappal, Sons & Company?

457 A. I didn't know it at the time.

Q. You know it now, don't you?

A. You have got it there; I was not here at the time.

Q. But, if it so reads, you are satisfied such was the fact, aren't you?

A. I don't know anything about it, because I was not here at the time.

Q. Now, then, Rappal, Sons & Company got possession of these cattle by an order from A. J. Gillespie & Company, didn't they?

A. I don't know how that is; as I said, they were bought by Bowen & Company.

Q. I am asking you how Rappal, Sons & Company came into possession of these cattle.

A. Well on account—because of the agreement Bowen & Company had with Gillespie & Company.

Q. No, I am asking you about the writings; didn't Gillespie & Company, on the back of the order that I just read to you, write these words: "Deliver to Rappal, Sons & Company," and sign it "A. J. Gillespie & Company?"

A. Well, I don't know.

Q. You — satisfied such was the fact, aren't you?

A. That way—some way, because Bowen & Company——

458 Q. Now, then, that order which A. J. Snider & Company gave A. J. Gillespie & Company, and which Gillespie & Company endorsed to Rappal, Sons & Company, was handed to some member of your firm at the stock-yards, wasn't it?

A. I was not here at the time; I suppose so; must have been handed or they wouldn't have got it.

Q. When they had that order signed by A. J. Gillespie & Company they would go to the office of the Stock-Yards Company and get an order for the cattle, wouldn't they?

A. I suppose so.

Q. You are familiar with the course of business?

A. Yes, sir.

Q. You know that is so?

A. That is the rule, I expect.

Q. And that is the way that Rappal, Sons & Company got these identical cattle, isn't it?

A. It looks that way; yes, sir.

Q. Now, it is true, isn't it, that Snider was paid for these 133 cattle the sum of $6,506.40?

A. I expect he got the money for it.

Q. By Gillespie?

A. According to the instructions of Bowen.

Q. Wasn't there $280 at that time, back freight, which came into Gillespie & Company's hands?

A. I couldn't say.

459 Q. Don't remember about that? The exchange on a draft

drawn by A. J. Gillespie & Company for this payment was $4.70, wasn't it?

A. They kept the books; I couldn't say.

Q. Don't remember?

A. I couldn't say.

Q. If you add the $4.70 to the $280 and take those two amounts from the $6,506.40 it would leave just $6,231.10, wouldn't it?

A. According to the paper there; I don't figure it.

Q. And that was the amount of the draft, wasn't it, drawn by A. J. Gillespie & Company on Rappal, Sons & Company?

A. Well, sir, as I told you before, I don't know anything about the drafts.

Q. It is that way as it looks now?

A. It looks that way.

Q. And that draft was not paid?

A. I couldn't say; guess not.

Q. You don't think it was, do you?

A. I don't know as it was.

Q. Now, then, on the 1st day of October did you buy 440 head of cattle of Quinlan, Montgomery and Company?

A. Mr. Bowen and Mr. James bought them.

Q. Where were you at that time?

A. Out in the country looking at some cattle.

Q. And those cattle came to $12,930.14?

460 A. I don't know; I never figured that; couldn't say.

Q. Have you any doubt about it?

A. I don't know; never kept the books; never looked the books over; couldn't say.

Q. Here is a check, Exhibit 3 to T. E. Gillespie's testimony, drawn by A. J. Gillespie & Company, dated October 1st, 1885, payable to Wuinlan, Montgomery & Company, for $12,930.14. Now, is not that the check that paid for those cattle?

A. I couldn't say for sure.

Q. You hav-n't any doubt about it, have you?

A. I hav-n't made any checks or anything of the kind; I don't know; Mr. Gillespie kept the books.

Q. From all you know now, don't you think that is right?

A. I couldn't tell you.

Q. Just as I have stated?

A. I didn't keep any books.

Q. Now, on the same day you bought of A. J. Snider & Company 375 head of cattle, didn't you?

A. Bowen & Company—well, Mr. James and Mr. Bowen bought them; I was not there that same day.

Q. You remember the fact?

A. Yes; I came back and *and* found out that evening.

Q. They came to $8,072?

461 A. I never figured it. I couldn't say.

Q. Have you any recollection about it at all?

A. No, sir. I never figured the cattle.

Q. I show you a check—Exhibit 2 to T. E. Gillespie's testimony—

drawn by A. J. Gillespie & Company on the Kansas City Stock-Yards, dated October 1st, 1885, payable to A. J. Snider & Company, for $8,072, which is stamped paid. Isn't that the check that went to A. J. Snider & Company in payment of these 375 head of cattle?

A. I couldn't say; might have been the case. I certainly didn't keep the books. As I said before, W. P. Bowen & Company paid Gillespie for keeping the books.

Q. You haven't any doubt about it, have you?

A. I couldn't say one way or the other. I haven't seen the checks, and didn't know anything about it.

Q. I show you the checks.

A. I don't know as I ever saw them.

Q. Have you any doubt but what these are the two checks that paid for that lot of cattle?

A. I couldn't say actually.

Q. You don't know they are not the ones?

A. I couldn't say whether they are or not. I can't say that from my knowledge before——

Q. Those cattle came to $20,883.82, didn't they?

462 A. That is the way it says there.

Q. You haven't any doubt about that?

A. I never figured them cattle up; don't know anything about it, any more than they weighed them, according to the receipts there.

Q. Now, there was $1,302.80 back freight, wasn't there, at that time that came into A. J. Gillespie's hands—A. J. Gillespie & Company's hands—to your account?

A. I couldn't say that, either.

Q. And the exchange on the draft drawn at this time, being $14.66—you knew about that? Now, if you add the back freight to the exchange and deduct it from the $20,883.82 it would leave $19,505.62, wouldn't it?

A. According to the way that is.

Q. That is the amount of money Gillespie had in those cattle, isn't it?

A. I couldn't say any different than they advanced the money——

Q. You haven't any doubt that is the fact?

A. They advanced the money, as I told you before.

Q. Now, then, a draft was drawn on that day by A. J. Gillespie & Company on your firm, at the stock-yards in Chicago, for $19,505.62, dated the same day. That was the correct amount, wasn't it, that A. J. Gillespie & Company had paid for those cattle?

463 A. I couldn't say. According to that, it shows that; that is all I know; couldn't say anything to the contrary. I haven't kept the books, as I told you.

Q. Where were these 810 head of cattle at the time A. J. Gillespie & Company paid for them?

A. I couldn't say; I was not there the day they were purchased, as I told you.

Q. Were you there when these cattle were bought from Snider and Quinlan & Montgomery?

A. I was there when the 130 were bought and 80 odd.

Q. You were not there when these 810 head were bought?

A. No, sir; I was away that day.

Q. Why, then, did you say in your direct examination, that Mr. Bowen and Mr. James bought them?

A. Because I was not there at that date.

Q. Then, you did not see these bought at all?

A. I did not; not the 800. I said in the morning I found out what was done.

Q. I now show you this order drawn, which reads as follows:

"Office of Quinlan, Montgomery & Company.

STOCK-YARDS, KANSAS CITY, MISSOURI, *October* 1*st*, 1885.

The Union Stock-Yards and Transit Company, U. S. Yards, Ill.:

464 Please deliver to A. J. Gillespie & Company 21 cars, shipped via ——, consigned to us.

Yours truly,

QUINLAN, MONTGOMERY & COMPANY."

At the time A. J. Gillespie & Company paid Quinlan, Montgomery & Company for those cattle was that order given to Mr. Gillespie, as I have read it?

A. I suppose so; I was not there at the time.

Q. You hav-n't any doubt about it, have you? On the back of this order are these words: "Deliver to Rappal, Sons & Company. A. J. Gillespie & Company." Mr. Gillespie put that on there, didn't he?

A. I didn't; I suppose very likely he did.

Q. And sent it by mail to Rappal, Sons & Company at the stock-yards in Chicago, did he?

A. I suppose so; I was not here at the time.

Q. You suppose that is the way the business was done?

A. Yes, sir.

Q. These cattle that were bought from A. J. Snider & Company came to Snider & Company from the Hanford Cattle Company; you remember that, don't you?

465 A. I couldn't say how they came—that is, not out——

Q. Do you, as a matter of fact, remember that these cattle constituting this lot about which we are inquiring came to Kansas City from the Hanford Cattle Company?

A. The 810 head?

Q. No; that portion of the 810 head which you bought of A. J. Snider & Company?

A. I was not there the day they were bought.

Q. Did you understand that fact to be so?

A. I did not; I was not there the day they were bought.

Q. Here is an order, which has been put in evidence, signed at Kansas City, directed to the Union Stock-Yards & Transit Company, Chicago: Please deliver to A. J. Gillespie & Company 15 cars, via Hannibal railroad, consigned from H. C. Company (meaning

Hanford Cattle Company), signed Hanford Cattle Company. Was that order given to A. J. Gillespie & Company?

A. I was not there, so I couldn't tell you.

Q. That was the course of buisness?

A. Couldn't tell you how they do buisness down there.

Q. You don't know?

A. Not in Kansas City; no, sir.

466 Q. On the back of that order are these words: "Deliver to Rappal, Sons & Company. A. J. Gillespie & Company." Was that order mailed by A. J. Gillespie & Company to your firm, at the stock-yards?

A. I couldn't say; I wasn't there at the time.

Q. You suppose that is the way they did buisness?

A. I suppose so.

Q. That is the regular way of boing the buisness, just as I have stated it?

A. Generally stated.

Q. You had nothing to do there with the shipping of these cattle yourself?

A. When the cattle——

Q. No—did you answer my question?

A. Mr. Bowen very often—sometimes—told the agent — wanted so many cars to ship them out, very often.

Q. But these orders that I have read to you, they came from the parties from whom you bought the cattle; they were not turned over to you; you didn't get those orders?

A. That is what we allowed Gillespie for, and paid them for that purpose—to take care of our buisness.

Q. Were these orders turned over to A. J. Gillespie & Company?

A. Well, he did our buisness.

Q. They were, were they not?

A. I suppose so.

467 Q. And then A. J. Gillespie & Company sent the orders endorsed on the back to Rappal, Sons and Company, Chicago?

A. I suppose so. I was not here at the time. I expect that is the way it is.

Q. Now, then, you paid A. J. Gillespie and Company 2 dollars and a half a car for doing this buisness?

A. Yes, sir; W. P. Bowen & Company did that.

Q. And that is all they got out of it?

A. Two dollars and a half a car—yes, sir—for taking care of them and shipping them.

Q. For paying for the cattle and shipping them and for the use of the money?

A. Yes, sir.

Q. That is all they realized out of it?

A. Two dollars and a half a car.

Q. At first they got 25 cents a head for cattle, didn't they?

A. $5 a car in the first place.

Q. Then after that had been going on for awhile you undertook to ship yourself to Chicago, didn't you?

A. Bowen & Company made a few shipments.

Q. And your books got confused?

A. We didn't keep any books. Bowen and Company didn't keep any books, and we let—really Mr. Connelly, at the bank, he kind of helped us get in the tickets and helped us out.

Q. Now, then, your books got confused, didn't they?

468 A. Got no books.

Q. Your accounts, then?

A. I don't know as they did.

Q. Then you made a new arrangement with A. J. Gillespie & Company, didn't you?

A. A. J. Gillespie came——

Q. No; I am asking you—answer my question. Did you make a new contract with A. J. Gillespie & Company?

A. W. P. Bowen & Company; yes, sir.

Q. By which you were to pay them $2.50 a car?

A. Yes, sir; for advancing the money and taking care of the cattle.

Q. And you say that in all cases where you made a contract to purchase some cattle of anybody the ticket was "O K'd" by Mr. Bowen and that was sent to the office of A. J. Gillespie & Company?

A. "O K'd" mostly all of them.

Q. A. J. Gillespie & Company paid for the cattle and shipped them to Chicago?

A. Generally, as a rule.

Q. I understood you that personally you don't know anything about the purchase of these 810 head of cattle—you were not there?

A. I was not there, and I heard that evening or next morning that Mr. Bowen and Mr. James had bought that amount of cattle.

Q. Mr. James and Mr. Bowen were there?

469 A. Yes, sir; and Mr. James were there and bought the cattle.

Q. There were 121 head of cattle bought by W. P. Bowen & Company on the 3rd of October, was there?

A. I think so. I know they had some few left there, if I am not mistaken; some 50-odd, I think, of one man.

Q. Who from?

A. White and somebody; I couldn't say who the party was now; 80 head, at $1.75 a hundred.

Q. Did you buy on the 3rd of October any cattle of J. S. Stoler & Company?

A. I don't know, I am sure; Mr. Bowen might have bought a few, for all I know.

Q. Did you buy any of Mt. Joy, White and Company?

A. I wouldn't wonder of that is the man the 80-odd cattle were bought of; am not sure.

Q. Did you buy any of A. J. Snider and Company?

A. That was the third day; I was absent.

Q. I am talking about the 3rd of October. Where were you on Saturday, the 3rd?

A. I was in the yards.

Q. At Kansas City?
A. Yes, sir.
Q. You say it was about 80-odd head, you think, were bought of Mt. Joy, White & Company?
470 A. One of the firms there; couldn't say which.
Q. Now, I show you a check, dated October 3rd, drawn by A. J. Gillespie & Company, payable to Mt. Joy, White & Company, for $1,066.97. Was that check given by A. J. Gillespie & Company to Mt. Joy, White & Company for those cattle bought that day?
A. I couldn't say.
Q. What do you think about it?
A. Couldn't really say; some number of cattle bought.
Q. Are you willing to say it was not given for these cattle?
A. Something I couldn't say.
Q. So far as you know, how did Mt. Joy, White & Company get their pay?
A. Couldn't say; I don't really know just how many.
Q. You can see that check, can't you?
A. I couldn't tell from the looks of it, because I didn't write the checks.
Q. You didn't do the business?
A. No, sir.
Q. A. J. Gillespie & Compuny paid for them?
A. That is what we hired them for.
Q. And they did it, did they?
A. I suppose they did; yes, sir.
Q. I have another check here, payable to J. R. Stoler & Company, dated the same day, drawn by A. J. Gillespie & Company, for $67.50. Do you remember that transaction?
471 A. I do not; no, sir.
Q. You don't remember anything about it?
A. I do not.
Q. I have another check here, drawn by the same parties, payable to A. J. Snider & Company, for $276.92. Do you remember that transaction?
A. I couldn't really say how it was; there were a few odds and ends bought; I really couldn't say.
Q. I have another check, drawn by the same parties, dated the same day, payable to A. J. Snider & Company, for $929.67. Do you remember that transaction?
A. I suppose it is right; I couldn't say.
Q. Didn't those 4 checks I have just enumerated pay for the 122 head of cattle that were shipped on that day?
A. I am not positive; very likely was; still I couldn't say.
Q. You have no doubt about it, have you?
A. As I tell you, I didn't keep the books and couldn't say.
Q. These parties to whom those checks are payable gave an order to A. J. Gillespie & Company for those cattle, didn't they, at Kansas City?
A. The ticket was sent to their office.
Q. They were weighed and paid for?

A. That is the way they come to know what they weighed—
472 by sending a ticket to their office.

Q. And Snider & Company and Milton James gave the open order, did they, through A. J. Gillespie and Company, for those cattle?

A. I couldn't say so; I suppose so.

Q. And then on the back of that order A. J. Gillespie & Company endorsed to Rappal, Sons & Company?

A. How would that order read—the whole of it?

Q. Here is one of them, dated Kansas City Stock-Yards, October 3rd, 1885, directed to the Union Stock-Yards and Transit Company, U. S. Yards, Illinois:

Please deliver for A. J. Gillespie & Company one car of cattle, shipped via Hannibal & St. Joe railroad, consigned to A. D.
(Signed) A. J. SNIDER & COMPANY.

On the back it says:
Deliver to Rappal, Sons & Company.
(Signed) A. J. GILLESPIE & COMPANY.

Is that correct?

A. It looks so on paper.

Q. Looks correct? It is correct, isn't it?

A. Certainly; that is what we hired them for.

Q. Here is one signed by Mt. Joy, White & Company, reading the same way, for 4 cars of cattle, dated the same day, the same words, excepting it is 4 cars, and signed Mt. Joy, White and
473 Company, deliver to Gillespie & Company. Is that correct?

A. According to Mr. Bowen's instructions, that is correct.

Q. That is the way the business was to be done?

A. Certainly.

Q. These orders were to be given and then these cattle were to be shipped to Rappal, Sons & Company, consigned to them, and turned over to them by A. J. Gillespie & Company, were they, to the firm of Rappal, Sons & Company, and they were to pay the drafts drawn by A. J. Gillespie & Company for the amount of money they paid out, were they?

A. That was the agreement W. P. Bowen & Company had with A. J. Gillespie & Company, to draw on Rappal, Sons & Company.

Q. It is true, isn't it, that in every instance, from April 20th, 1885, up to this draft for $6,231.10, Rappal, Sons & Company did pay those drafts?

A. I believe they did.

Q. Right along from April 20th up to October 1st?

A. I guess they have.

Q. And that draft for $6,231.10, dated September 30th, 1885, Rappal, Sons & Company didn't pay, did they?

A. It says so there.

474 Q. And they didn't pay the draft for $19,505.62, did they?

A. It seems not.

Q. And they didn't pay the draft for $691.70, did they?

A. Seems not; no.
Q. Up to that time they had paid every draft?
A. Yes, sir.
Q. And those three amounts that I have just named are precisely the amount that A. J. Gillespie & Company paid out for those three shipments of cattle, isn't it?
A. I couldn't say.
Q. Do you know it is not correct?
A. Couldn't say, because I didn't keep the books.
Q. So far as you know, is it correct?
A. Couldn't say.
Q. Have you any doubt about its being correct?
A. Couldn't say where they got all the money.
Q. And if it is not correct, state wherein it is wrong.
A. There may be some draw-backs; perhaps it is done right; I couldn't say.
Q. Do you know of any wrong about it?
A. Couldn't state, for I didn't keep the books.
Q. Who was the head of the firm of Rappal, Sons & Company?
475 A. I don't know as there—when I was absent and when I was there it was all the same, one — just as much to say as the other.
Q. Who was the senior partner of that concern?
A. I was the — F. J. Rappal.
Q. Composed of yourself and your two sons?
A. Yes, sir.
Q. How old were your two sons at that time?
A. One was not quite 25—about 24 and a half—the other about 22½.
Q. Nobody else in the concern?
A. No, sir.
Q. How old are you?
A. 48; will be 49 the 14th of this December coming.
Q. You don't know anything wrong in the account of A. J. Fillespie & Company with W. P. Bowen & Company, do you?
A. Couldn't say, for I never kept the books.
Q. You can't point out anything wrong in the account or in the amounts included in those three drafts?
A. I couldn't say.
Q. You don't know of anything wrong?
A. Not as I know of.
Q. Have you got any property?
A. I have had; yes, sir.
Q. Have you had since October 5th, 1885?
A. No, sir; it is mortgaged.
Q. Have you had since then?
476 A. No, sir.
Q. Have your sons had any property?
A. No, sir.

Q. You have had no property since October 5, 1885; neither have either of your sons?
A. No, sir.
Q. Has the firm of Rappal, Sons & Company had any property since then?
A. No, sir.

DECEMBER 2ND, 1886.

Counsel present as before.

F. J. RAPPAL, Jr., being first duly sworn, testified on behalf of defendants as follows:

By Mr. MILLER: Give your name in full.
A. Fred J. Rappal, Jr.
Q. Were you a member of the firm of Rappal, Sons & Company during the year 1885?
A. I was.
Q. Who composed the firm of Rappal, Sons & Company at that time?
A. F. J. Rappal, Sr., L. L. Rappal, and F. J. Rappal, Jr.
Q. That copartnership was in existance during the months of September and October, 1885?
A. It was.
Q. Did you know of the firm of A. J. Gillespie & Company, of Kansas City?
477 A. I did.
Q. What was their business?
A. Commission.
Q. Did you know of the firm of W. P. Bowen & Company, of Kansas City?
A. I did.
Q. In what way did you know of the firm of W. P. Bowen & Company?
A. As buyers and shippers of live stock.
Q. From whom did you know of their existence?
A. From F. J. Rappal, Sr.
Q. State whether or not your father told you of the organization of that firm at Kansas City?
A. He did.
Q. State whether or not your father told you of any arrangement made by W. P. Bowen & Company with A. J. Gillespie & Company with reference to the purchase of cattle at Kansas City.
A. He did.
Q. What did he tell you?
A. He came up from there some time in April and said that he had formed a partnership with W. P. Bowen, Milton James, and himself.
Q. For what purpose?
A. For the purchase and shipping of cattle and handling cattle. He made an arrangement with A. J. Gillespie and Company for

W. P. Bowen & Company, by which Bowen & Company was
478 to pay Gillespie & Company $5 a car for advancing—loaning money—and handling stock in the yards there and shipping; and later on he wrote and said it was $2.50 a car for the same arrangements for Bowen and Company.

Q. Was anything said by your father in that conversation or in any conversation that had reference to this same matter, about how the cattle that were bought by Bowen & Company were to be paid for—through whom and to whom?

A. Yes, sir.

Q. What was said?

A. He said that he had made this arrangement between Bowen & Company and A. J. Gillespie & Company, A. J. Gillespie & Company to furnish this money or advance it, and they were to receive $5 a car for the loan and handling of it, and to ship this stock to Rappal, Sons & Company.

Q. To Rappal, Sons & Company?

A. Yes, sir.

Q. And what were Rappal, Sons & Company to do with the cattle?

A. They were to sell them.

Q. For whose account?

A. On account of W. P. Bowen & Company.

Q. Now, then, was anything said at that time or at any
479 time thereafter, when this matter was talked of between yourself and your father, as a member of the firm of W. P. Bowen & Company, about the payment of overdrafts from the proceeds of these cattle? In what way were you to pay W. P. Bowen & Company for these cattle which you say were to be sold by you on account of Bowen & Company?

A. Were to pay for them by draft on account of Bowen & Company.

Q. Was anything said about who should draw these drafts?

A. No.

Q. As a matter of fact, who drew drafts on you during the months intervening between April and the middle of August for the proceeds of cattle shipped through A. J. Gillespie & Company on account of W. P. Bowen & Company—who drew the drafts?

A. A. J. Gillespie & Company.

Q. Now, then, did you or any member of the firm of Rappal, Sons & Company, so far as you know, agree at any time with A. J. Gillespie & Company to pay all drafts they should draw on you for the proceeds of the Bowen & Company cattle?

A. No.

Q. Then, why did you pay the drafts that were drawn upon you by A. J. Gillespie & Company for the proceeds of these cat-
480 tle—by an arangement with whom?

A. By an arrangement with W. P. Bowen & Company.

Q. Now, then, did your father or any member of the firm of W. P. Bowen and Company suggest any reason to you why you should pay drafts drawn by A. J. Gillespie & Company rather than by Bowen

& Company—in other words, do you know why the drafts were drawn by Gillespie & Company and not by Bowen & Company?

A. Yes, sir; I do.

Q. Why, if you know?

A. Of course, it made it handier for Bowen & Company to have Gillespie & Company draw than it would be to have Bowen & Company draw for the net proceeds and turn it over to Gillespie & Company, and Bowen & Company didn't keep any books.

Q. Does your father know anything about book-keeping?

A. No, sir.

Q. Does your father read writing readily?

A. He reads it, but not very readily.

Q. Does your father know anything about the book-keeping or financial part of buisness?

A. No, sir.

Q. Has had no training in that way at all?

A. No, sir.

481 Q. I would like to ask you whether you are in any way interested in the firm of W. P. Bowen & Company?

A. No, sir.

Q. Do you know of any arrangement between the members of the firm of Rappal, Sons & Company by which they were to do buisness in Kansas City with A. J. Gillespie & Company under the name of W. P. Bowen & Company?

A. I do not.

Q. Was there any such arrangement, so far as you know, between Rappal, Sons & Company and A. J. Gillespie & Company by which Rappal, Sons & Company were to do buisness under the name of W. P. Bowen & Company?

A. No, sir.

Q. Did you ever hear of any such arrangement?

A. No, sir; never thought of such an arrangement.

Q. Who had the management of the buisness of Rappal, Sons & Company at the stock-yards in Chicago during the time intervening between the middle of April and the first week in October, 1885?

A. L. L. Rappal and F. J. Rappal, Jr.

Q. Do you recollect the fact of a large number of cattle being shipped, through A. J. Gillespie & Company, on account of

482 W. P. Bowen & Company, to Rappal, Sons & Company during that time?

A. I do.

Q. With whom was the account of the proceeds of the sale of those cattle and drafts drawn on account of cattle sold kept?

A. Account of W. P. Bowen & Company.

Q. I hand you a paper now headed, page 294, R. J. Gillespie & Company, account Bowen & Company, and purporting to be a transcript of the ledger account kept by Rappal, Sons & Company and A. J. Gillespie & Company, account Bowen & Company, and ask you if you know what it is.

A. It is a transcript of the ledger, page 294, kept — Rappal, Sons

& Company, A. J. Gillespie & Company, account of Bowen & Company.

By Mr. MILLER: I offer this transcript in evidence as Exhibit 4.

Q. Have you compared that transcript that you hold in your hand with the account as it appears upon your ledger?

A. I have.

It is agreed between counsel that the transcript of the account in the hands of the witness may be used in lieu of the original book from which it was taken, with the right reserved on the part
483 of complainants' counsel to compare it if they so desire, and the proof of the book-keeper who made the entries in the original book is waived.

Q. Between what dates does that show the account kept by Rappal, Sons & Company with Bowen & Company?

A. From July 23rd to October 6, 1885.

Q. So far as you know, this is a correct transcript of your books?

A. It is.

Q. You believe it to be so?

A. I do.

Q. I see that account is headed A. J. Gillespie & Company, account W. P. Bowen & Company. Will you explain what that means, if you know—what does the debit side of that account show and what does the credit side show?

A. The debit side shows drafts drawn by Bowen & Company on Rappal, Sons & Company and net sales, account Bowen & Company, made by Rappal, Sons & Company.

Q. On account of whom?

A. On account of W. P. Bowen & Company.

Q. Now, then, why do you use the name of A. J. Gillespie & Company in connection with that account? The account is headed A. J. Gillespie & Company, account Bowen & Company. Why do you use the name of A. J. Gillespie & Company in connection
484 with that account, if the account shows the proceeds of sales of cattle belonging to Bowen & Company and the drafts drawn on account of those sales?

A. By the arrangement made between A. J. Gillespie & Company and W. P. Bowen & Company.

Q. Do you mean to say there was any arrangement between Bowen & Company and A. J. Gillespie & Company as to how you, Rappal, Sons & Company, should keep the account?

A. No.

Q. I want to know why Rappal, Sons and Company kept that account in the form that it appears to be kept there—A. J. Gillespie & Company, account Bowen & Company—in other words, why the name of A. J. Gillespie & Company appears at all in connection with the account?

A. It is the nature of our business to keep all these accounts this way.

Q. What way? I want to know what it means.

A. A. J. Gillespie & Company, account Bowen & Company.

Q. That doesn't explain why you use the term A. J. Gillespie & Company. By whom did you say the drafts were drawn usually for the proceeds of the cattle sold on account of Bowen and

485 Company?

A. By A. J. Gillespie & Company.

Q. Is that the reason the name of A. J. Gillespie & Company appears in that account?

A. That is about as near the reason I know as any.

Q. Is that the reason or is it not?

A. Well, yes; it is the reason.

Q. Did you in the use of the term A. J. Gillespie & Company in connection with the account of Bowen & Company mean thereby that these cattle that were sold on account of W. P. Bowen & Company belonged to A. J. Gillespie & Company or that A. J. Gillespie & Company had any interest in those cattle whatever?

A. No.

Q. Then I understand you to say it merely means that by an arrangement with W. P. Bowen & Company for their convenience the drafts for the proceeds of these cattle were drawn by A. J. Gillespie & Company, and that you were in the habit of paying those drafts and kept the accounts in this way?

(Objected to as leading.)

A. Yes, sir.

Q. Did you, from time to time, receive statements of account from A. J. Gillespie & Company?

A. We did.

486 Q. Look at these three papers I now hand you, headed Mr. W. P. Bowen & Company on account of A. J. Gillespie & Company, commencing April 20th on the debit side, and April 22nd, 1885, on the credit side and consisting of 3 parts; the first ending on the credit side, June 15th; the second commencing on the debit side July 1st and ending August 12th on the debit side; the third headed in the same way, commencing on the credit side August 21st and ending on the credit side October 6th, 1886, and state if you know where those statements of account came from—from whom, to whom, and what they are.

A. They are statements of account sent by A. J. Gillespie & Company, of Kansas City, account W. P. Bowen & Company, to Rappal, Sons & Company.

Q. The first of these papers referred to is marked Exhibit 8 to T. E. Gillespie's testimony; the second of the papers referred to is marked Exhibit 2 to F. J. Rappal Jr.'s testimony, and the third is marked Exhibit 3 to his testimony.

Q. From whom did you receive those papers shown you?

A. From A. J. Gillespie, for the account of Bowen & Company.

Q. Did you receive them in due course of business?

487 A. I did.

By Mr. MILLER: I desire to offer these 3 exhibits in evidence.

Q. You have stated what the 2 sides of the account kept by Rappal, Sons & Company with A. J. Gillespie & Company, account Bowen & Company, shows; do you know what each side of the account which is rendered to you by A. J. Gillespie & Company or by Bowen & Company, in account with A. J. Gillespie & Company, shows?

A. It shows cattle bought by Bowen & Company.

Q. Show the cost?

A. It shows the cost of cattle bought by Bowen & Company—that is, the debit side—and the credit side shows the cash they received from different parties.

Q. Then, I understand that the debit side of the account rendered to you by Gillespie & Company, headed Bowen & Company in account with Gillespie & Company, shows the number of cattle bought and the cost of the cattle, while the credit side shows what A. J. Gillespie & Company received from Bowen & Company?

A. Yes, sir.

Q. And the account that Rappal, Sons & Company kept
488 with A. J. Gillespie and Company shows, on the debit side, the drafts drawn by A. J. Gillespie & Company, account W. P. Bowen & Company, and the credit side shows the net sales—net proceeds of sales.

A. Yes, sir.

Q. Look at the paper marked Exhibit 5 to F. J. Rappal Jr.'s testimony and state whether or not that shows the account of W. P. Bowen & Company in account with A. J. Gillespie & Company; and, if so, from what date to what date, inclusive.

A. It does; between June 15th, 1885, and June 30th, 1885.

Q. From whom was that received?

A. From A. J. Gillespie & Company.

Q. And is it a part of the same series of statements that have been referred to before by you?

A. It is.

Q. And is it a part of them?

A. It is.

By Mr. MILLER: I offer this statement in evidence.

Q. I now hand you these packages of letters marked, respectively, Exhibit 9 to T. E. Gillespie's testimony, Exhibit 10, T. E. Gillespie's testimony, and Exhibit 11, T. E. Gillespie's testimony, and ask you from whom those letters were received?

489 A. From A. J. Gillespie & Company. I have examined them.

Q. How were they received?

A. By mail.

Q. Due course of mail?

A. Due course of mail.

Q. At or about the time they bear date?

A. Yes, sir.

By Mr. MILLER: I offer these packages in evidence.

Q. Does Exhibit 4, being the paper I now show you, show the amounts that were due Rappal, Sons & Company during September and October, 1885, particularly on the 1st, 3rd, 5th, 6th, 7th, 8th, 9th, and 10th of October, or how far does the account extend?

A. Extends to the 6th of October.

Q. And shows the indebtedness, if any, up to the 6th of October, inclusive?

A. Yes, sir.

Q. Does that account show what the present indebtedness of W. P. Bowen & Company is to the firm of Rappal, Sons & Company?

A. It does.

Q. What interest had you in the firm of Rappal, Sons & Company?

A. One-third.

Q. How long had you that interest?

A. Since the year 1884.

Q. What was the style of the firm before that?

490 A. Rappal, Sons & Evans.

Q. While the firm was *was* Rappal, Sons & Evans what interest had the parties, respectively?

A. F. J. Rappal, Sr., one-third; Ad. Evans, one-third; L. L. Rappal and F. J. Rappal, Jr., one-third.

Q. When Mr. Evans went out of the firm what were the respective interests?

A. F. J. Rappal, Sr., one-third; L. L. Rappal had Ad. Evans' third, and I had his and mine—makes one-third I had.

Q. And those were the interests of the parties up to the time that the firm of Rappal, Lamb & Company was formed?

A. It is.

Q. During last summer?

A. Yes, sir.

Q. Did you and your brother, L. L. Rappal, put any money into the firm of Rappal, Sons & Company?

A. We did.

Q. Do you recollect how much?

A. I think it was in the neighborhood of $3,000 apiece.

Q. That was back in 1884?

A. Yes, sir.

Q. Did you hear the testimony of your father yesterday with reference to an interview that was held at the Palmer House on the 15th or 16th of October, 1885, when A. J. Gillespie & Com-

491 pany, your father, yourself, and L. L. Rappal were present?

A. I did.

Q. Were you present at that interview?

A. I was.

Q. Do you know who requested that interview?

A. A. J. Gillespie, Sr.

Q. You went there in response to his invitation?

A. We did.

Q. Do you recollect about what time of the day that was had?

A. I think he sent a telegram saying to meet him there about the neighborhood of between 2 and 3 o'clock.

Q. What was the purpose of the interview and what was said, as near as you can recollect, by Mr. Gillespie to you or to any of you three, and what did you say to him? Give the conversation as nearly as you can.

A. Father & brother, Mr. Gillespie, and myself sat down near the stairs, on the left-hand side, as you go up in the rotunda there. We were sitting around in a circle, and Mr. Gillespie says, Now boys, what can we do? We said nothing, because we didn't know any reason why we should do anything, as we had nothing to do with A. J. Gillespie. So he spoke up to father and he said: Now
492 here, you say these cattle are A. J. Gillespie's cattle instead of Bowen & Company's cattle, and I will stand the loss while in transit and let the bank stand the amount of the cattle. We will beat the bank out of it; that is the very words he used.

Q. That we will beat the bank out of it?

A. Try and beat the bank out of it.

Q. Do you recollect whether I was present during that afternoon or not?

A. You were; you came in, or thereabouts.

Q. Do you recollect whether I was introduced to Mr. Gillespie or not?

A. I don't recollect that; I think I saw Mr. Bisbee there.

Q. Was Mr. Bisbee there before or after this conversation?

A. On or about that time; he was there that afternoon.

Q. Was Mr. Bisbee present during that conversation?

A. No; nobody but brother L. L., father, A. J. Gillespie, and myself.

Cross-examination by Mr. BISBEE:

Q. These accounts which have — put in evidence to-day as having been sent by A. J. Gillespie & Company to your firm at Chicago, commencing April 20th, 1885, and ending October 10th, 1885, are correct, are they?

A. To the best of my knowledge, they are.

493 Q. You have no doubt, so far as you know, about their correctness?

A. No.

Q. The account that the book-keeper took off your books, being Exhibit 4, is an exact copy from your ledger, isn't it?

A. It is.

Q. And it charges Gillespie & Company, account Bowen & Company, with the draft that the firm of Rappal, Sons & Company paid, don't it?

A. It does.

Q. And all those drafts were drawn by A. J. Gillespie & Company, were they?

A. To the best of my knowledge.

Q. I see here, under date of July 29th, B. & J.; what does it mean?

A. Bowen & James, or Jennings.

Q. That item was a shipment for account of Bowen & Jennings, wasn't it?

A. It must have been; yes, sir.

Q. That is, as you understand it, this way: Bowen & James bought some cattle in Kansas City?

A. Yes, sir.

Q. A. J. Gillespie & Company paid for those cattle; is that right, as you understand it?

A. As I understand it, I think that is it; I was not there.

Q. And those cattle were shipped here by A. J. Gillespie & Company and turned over to Rappal, Sons & Company, were they?

494 A. Those cattle, to the best of my knowledge, I think, were billed A. J. G. & Company, account Bowen & Company.

Q. By A. J. G. you mean A. J. Gillespie and Company?

A. Yes, sir.

Q. I notice in this account you charge, for instance, August 7th, draft Bowen. Bowen didn't draw any drafts on you, did he, that went into this account?

A. We understood it as such.

Q. But did he draw the drafts? Who signed the drafts?

A. The drafts were drawn by A. J. Gillespie & Company, with the arrangement made by W. P. Bowen & Company down there.

Q. In other words, didn't all the drafts appear just like Exhibit D, I show you now; isn't that the way they were all signed?

A. I wouldn't say all of them, but the majority of them were.

Q. Do you know of any that were not signed so?

A. I think some of them were signed by F. J. Rappal.

Q. By F. J. Rappal instead of A. J. Gillespie & Company?

A. I think so.

Q. F. J. Rappal signed the drafts?

A. I think so.

495 Q. Between the time that A. J. Gillespie & Company were getting $5 a car and $2.50 a car, wasn't there a few drafts drawn when F. J. Rappal signed the drafts?

A. It was either that or Bowen & Company. I know that there were some drafts that Gillespie——

Q. But when you charge a draft on this account of yours, Exhibit 4, you mean the drafts usually drawn by A. J. Gillespie & Company, don't you?

A. To the best of my knowledge, it is.

Q. And you credit up in your books the net proceeds, after deducting your commission and the freight and the stock-yards' charges to their account, Exhibit 4?

A. Yes, sir.

Q. What is this item here, A. J. Gillespie, cigars, $5?

A. Those are cigars that are bought for the account of Bowen & Company, sent to A. J. Gillespie & Company, ordered bought by Bowen & Company.

Q. Sent there for Bowen's use?

A. No, sir; for A. J. Gillespie & Company.
Q. For A. J. Gillespie's use?
A. Yes, sir.
Q. Who ordered those cigars?
A. One of the firm of W. P. Bowen & Company.
Q. One of the firm of W. P. Bowen & Company?
A. Yes, sir.
Q. Which one?
496 A. That is a conundrum to me; I don't remember the handwriting; father doesn't write very much.
Q. As a matter of fact, the cattle that W. P. Bowen & Company bought at Kansas City, which were shipped to you through A. J. Gillespie & Company and sold by Rappal, Sons & Company, — lost money during the summer, didn't they?
A. To the best of my knowledge, they did.
Q. And that is the secret, isn't it, as a matter of fact, of Rappal, Sons & Company getting so far behind in their bank account with the Union Stock-Yards National Bank?
A. It is by Bowen & Company not putting up margins.
Q. The fact is, that so far as the business went the cattle shipped by W. P. Bowen & Company or Bowen, James—I mean that account, no matter who the parties were, there appeared to be quite a heavy loss between April 20th and October 1st, 1885, on account of cattle bought by Bowen & Company & Bowen & Jennings, &c., and shipped to your house to be sold on commission; there were quite a severe loss on those cattle during those 6 months?
A. Yes, sir; Bowen & Jennings had but one shipment. He came there from——
Q. Now, then, by reason of that loss incurred by Bowen &
497 Company the firm of Rappal, Sons & Company got extensive favors from the bank, didn't they—that is, you had to get it——
A. They did, but we always had favors before Bowen & Company ever went into business.
Q. But you didn't require as many, did you, before that?
A. Yes, sir.
Q. As much?
A. Yes, sir.
Q. Were your overdrafts at the bank as large before April, or, say, before July 1st, as they were after that?
A. Yes, sir.
Q. What would your overdrafts average at the Union Stock-Yards National Bank during the year 1884 and up to July 1st, 1885?
A. As to that I couldn't say.
Q. Give your best judgment; as a Yankee would say, give your guess.
A. Our overdrafts have been as high as $10,000 or $12,000, to my knowledge, and I think they have been higher.
Q. Right along before that?
A. Not every day.

Q. What was your overdraft on the 1st day of October, 1885?
A. I do not really know.
Q. Over $20,000, was't it?
A. I couldn't say, really, how much it was, but some place
498 in that neighborhood, I should judge.
Q. You say, now, that your overdrafts, prior to July 1st, would average as large as it did from July 1st up to October 1st, 1885.
A. Well, I don't know as to that.
Q. Don't think it would, do you?
A. No; I don't think it would.
Q. Now, then, as a matter of fact, isn't it true that by reason of this loss on the Bowen cattle you had large favors from the bank—larger than you otherwise would have had—by way of overdrafts and loans?
A. Yes; but we could have had any favors we wanted; before that it made no difference.
Q. I ask you as a matter of fact.
A. I said, yes; now I say that we could have had——
Q. Could have had if you wanted theem?
A. Yes, sir; before that any time.
Q. If you had needed the money?
A. $5,000 or $10,000, yes, sir; got $50,000 or more——
Q. If you wanted it?
A. Yes, sir.
Q. But you didn't need it; therefore you didn't have it?
A. We didn't really need it.
Q. The first lot of cattle in question seems to be 133 head of cattle shipped September 30th, 1885, from Kansas City. Now,
499 how did you receive into your possession the order, a copy of which I now show you, marked Exhibit U, first, being an order from A. J. Snider & Company to deliver these cattle to A. J. Gillespie & Company, at Kansas City; then on the back endorsed by A. J. Gillespie & Company to deliver them to you; how did you receive that order—by mail or otherwise?
A. I think that order came by mail.
Q. Directed to Rappal, Sons & Company?
A. Yes, sir; to the best of my knowledge.
Q. And it came, of course, from A. J. Gillespie & Company?
A. I could not swear to how it came, but naturally suppose——
Q. Would come so—must come so—wouldn't it. Now, then, all these orders had on the back, Deliver to Rappal, Sons & Company, signed A. J. Gillespie & Company?
A. Here is one, Deliver Rappal, Sons and Company. A. J. Snider & Company.
Q. Yes; there is one car that way, but most of them—there is another of A. J. Gillespie & Company, and here are some more; that is the way you received the orders, was it?
A. To the best of my knowledge, that is the way.
Q. All the cattle you received an order for from A. J. Gil-
500 lespie & Company, the face of the order would be like this one: An order from Snider & Company to deliver them to

Gillespie & Company; then on the back endorsed by Gillespie & Company to deliver to you; that is the way you received these orders?

A. Yes, sir; those orders, then, these orders. These cattle came in on a through rate from other points outside of Kansas City, but most of these cattle came—A. J. Gillespie & Company, account of Bowen & Company—to Rappal, Sons & Company direct.

A. I am talking about the orders, not about the shipping bills. Didn't you get these cattle upon an order like I have shown you?

A. I said, yes, most of the Bowen & Company's cattle came direct without orders. Occasionally we would get an order like this when cattle came on through rating from the Far West or points outside of Kansas City.

Q. Look at Exhibit A, as evidence in this case; it shows 133 head of cattle sold by you, don't it?

A. It does.

Q. And that is your report of sale, is it?

A. It is.

Q. Now, those cattle were turned over to A. J. Gillespie &
501 Company by A. J. Snider & Company, were they, at Kansas City, as per the orders which I show you, Exhibits U and V?

A. Well, 6 cars were turned over that way, and 1 car was turned over to us direct from the—hold on. It seems these 7 cars were delivered to A. J. Gillespie & Company at Kansas City, and then it seems that Snider & Company delivered them to Rappal, Sons & Company.

Q. But this one is signed by A. J. Gillespie & Company?

A. Yes; one car. I see this handwriting is made by—doesn't it look like Mr. Gillespie's handwriting?

Q. It isn't; that is a copy. Now, then, the next lot of cattle in controversy is the 810 head, is it not, represented by your account of sales, Exhibit B?

A. It is.

Q. Examine the orders which I show you and state if those cattle represented in that exhibit were not turned over to A. J. Gillespie & Company, at Kansas City, by Quinlan, Montgomery & Company and the Hanford Cattle Company.

A. They were delivered to A. J. Gillespie & Company in Kansas City.

Q. How did those orders reach you at the stock-yards?

502 A. In the usual course of business, I think, by mail.

Q. A. And J. Gillespie & Company turned them over to you by the endorsement on the back of the order, did they?

A. Yes, sir.

Q. And you took those orders and went to the Union Stock-Yards & Transit Company's office, and that is the way Rappal, Sons & Company came into possession of the cattle, isn't it?

A. I don't know whether I took them there or not, but one of our firm or a representative of our firm.

Q. I mean one of your firm or an employé?

A. Yes, sir.

Q. You went to the office and left the order from Gillespie & Company to you, and that was the only way you could get those cattle, wasn't it?

A. I believe that was the only way.

Q. And then Rappal, Sons & Company sold those cattle at the stock-yards and made the account of sale, which I have just shown you, to A. J. Gillespie & Company's account Bowen and put it there?

A. Yes, sir.

Q. And you realized in that sale of that lot of cattle $20,547.33, didn't you?

A. To the best of my knowledge, we did.

503 Q. And paid freight and back charges, as appears in that account, and your commission, amounting to $4,027.64, showing the net proceeds of $16,519.69?

A. To the best of my knowledge, it is right.

Q. With relation to the third account of sales, Exhibit C, there are 122 head of cattle, isn't there?

A. Yes, sir.

Q. Those were shipped on October 3rd from Kansas City, were they?

A. I think they were.

Q. Now, examine the orders I show you, Exhibits S and T, and state if those cattle were not turned over by A. J. Snider & Company and Mt. Joy, White & Company, to A. J. Gillespie & Company in Kansas City?

A. Yes, sir; I think that is correct.

Q. And you received the orders by mail, didn't you, from A. J. Gillespie & Company?

A. To the best of my knowledge.

Q. And endorsed over by A. J. Gillespie & Company to Rappal, Sons & Company, were they?

A. Yes. sir; I think that is right.

Q. You took those orders—that is, you or some member of your house—and went to the Union Stock-Yards & Transit Companys' office, in the Exchange building, presented those orders, and then got an order from the Transit Company to take possession of those cattle, didn't you?

A. I think we did. I don't remember anything about getting any orders.

504 Q. And you sold those cattle and made the account of sales you hold in your hand, Exhibit C, did you?

A. Yes, sir.

Q. And charged your commission and charged the amount of freight you had to pay and yardage and feed and left the net amount $1,857.27?

A. Yes, sir.

Q. And the cattle in question all came into your possession or the possession of Rappal, Sons & Company through the orders I have just shown you, which you presented at the Stock-Yards Company's

office, and they turned the cattle over to you upon those orders, didn't they?

A. I think that is right.

Q. And the amount that that cattle realized, as per Exhibits A, B, & C, which you have just had in your hands, was received by your firm in money, wasn't it—or checks or scale tickets?

A. Well, I presume so.

Q. Don't you know it?

A. Well, the book-keeper always got the money or the check.

Q. When I say money I mean checks or scale tickets as well as money. It is the same thing, isn't it, to you as money?

A. Yes, sir.

505 Q. And the proceeds of those cattle, either checks or scale tic-ets, was deposited by you in the Union Stock-Yards National Bank, was it?

A. I think it was, to the best of my knowledge.

Q. To the best of your knowledge and belief, such was the fact, wasn't it?

A. Yes, sir.

Q. How long after the sale of this last lot of cattle was it before one of the firm of A. J. Gillespie & Company called on you at the stock-yards?

A. It was either Tuesday or Wednesday, October 6th or 7th, 1885.

Q. Either Tuesday or Wednesday?

A. Yes, sir.

Q. He informed you, didn't he, of the fact that these drafts represented the amount of money that they had paid for these cattle?

A. Not to my knowledge, he didn't.

Q. Did you have any talk with him?

A. No.

Q. You didn't have any.

A. He just wanted to know where father was, and he didn't want to see anybody particular but father, and he wanted to know something about some cattle, and I told him I knew nothing about A. J. Gillespie & Company, so that was the end of it between him and me.

Q. Where was your father at that time?

A. I think he was in Kansas City.

506 Q. Where did he spend his time between April 20th and October 6th, 1885?

A. I think he was at Kansas City and at Waukesha, to my knowledge, and in Chicago, and I don't know whether he was any other place or not.

Q. Where was he most of the time?

A. I think he must have been in Kansas City.

Q. You knew that he, Mr. Bowen, and Mr. James were buying cattle there together, did you?

A. I did.

Q. And you knew that A. J. Gillespie & Company paid for these cattle, didn't you?

A. I knew they had a contract with Bowen & Company to advance——

Q. Did you know that A. J. Gillespie & Company were paying for all the cattle they bought there.

A. Did I know they were paying?

Q. Yes; did you know it?

A. I couldn't say that I did.

Q. You didn't know that A. J. Gillespie & Company paid for that cattle, you say?

A. No; I couldn't really swear to it.

Q. You hav-n't any doubt about it, have you?

A. I hav-n't any real doubt about it, because we do business of that kind ourselves here.

507 Q. Did your father put any money into the firm of Bowen & Company?

A. I don't know; my father has been out of——

Q. Do you know of his putting any money into the firm?

A. Can't say that I do.

Q. Did he take any money out of the firm of Rappal, Sons & Company to put in that firm?

A. No, sir.

Q. Now, when this money was deposited in the Union Stock-Yards National Bank—proceeds of these 3 shipments of cattle—did you leave any property?

A. Did I?

Q. Yes.

A. No, sir.

Q. Did your brother, L. L. Rappal, have any property?

A. No, sir.

Q. Did your father, F. J. Rappal, have any property?

A. He did leave some property.

Q. What was it?

A. Real estate and city property in Will county.

Q. What has become of it?

A. I think that it is mortgaged now.

Q. Who to?

A. To — the Union Stock-Yards National Bank has a mortgage, and the Stock Yards & Transit Company has a mortgage, and

508 J. C. Alder, of Joliet, has a mortgage; that is the best of my knowledge.

Q. Those were put on right away after this time, were they?

A. On or about that time.

Q. After those mortgages were put on did your father have any property?

A. No, sir.

Q. Has he got any now?

A. No, sir.

Q. Have you got any now?

A. No, sir.

Q. Has your brother, L. L. Rappal, got any property?

A. No, sir.

Q. Have you had, either of you three, from the time those mortgages were made up to the present time?

A. No, sir.

Q. Nothing whatever?

A. Nothing whatever.

Redirect examination by Mr. BROWN:

Q. You spoke about getting more accommodations or larger accommodations in overdrafts from the bank on account of loses which had been made upon the cattle which you say were shipped and sold account Bowen & Company. Do you mean to
509 say that you got overdrafts because you so represented to the bank, or that that was usually the reason why you had to get them?

A. No, sir.

Q. You mean that you did not so represent to the bank?

(Objected to as leading.)

Q. Did you communicate to the bank before Monday, the 5th of October, that you had lost money upon any cattle shipped to you by Bowen & Company?

A. No, sir.

Q. Then, what representations did you make to the bank on account of which they gave you the overdrafts of which you speak?

A. No more than I would under any other circumstances; we had cattle coming from all over the country; we had drafts from different parties coming in; cattle had to be paid for; cattle was in the yards; couldn't be sold. Well, we would go in and tell Mr. Washburn or Mr. Conrad that such was the case, and he would say, All right.

Q. Did you ever tell Mr. Conrad or Mr. Washburn or any officers connected with the bank in respect to the overdrafts, that you
510 needed these overdrafts for any other purpose than to pay for the cattle which you had coming or on hand?

A. No, sir.

Q. Why did Rappal, Sons & Company not pay the three drafts which are marked Exhibits D, E, & F in controversy, drawn by A. J. Gillespie & Company upon you, one for $6,231.10, one for $19,505.62, and one for $600 odd?

A. Because Bowen & Company were owing us somewhere in the neighborhood of $29,000. They got in debt to us.

Q. How did they get in debt to you?

A. By shipping cattle from Kansas City to Chicago.

Q. Now exactly by shipping cattle, I suppose. How could they——

A. By losses they made while shipping cattle.

Q. Then how had they got in debt to you—how would your money become lost in it?

A. By their drawing on us—by the arrangements Gillespie had for drawing for proceeds from us account Bowen & Company.

Q. Then the drafts which you had already paid of Gillespie &

Company, account Bowen & Company, were to that extent, *to* you mean to say, $29,000 or $30,000 in excess of the money which
511 you would receive from the sale of these cattle?

A. I do.

Q. Before these drafts came?

A. Before these drafts came.

Q. Now, I will ask you whether you communicated any of this business to the Union Stock-Yards National Bank before the 5th of October, 1885?

A. Never did.

Q. Did you before the 5th of October, 1885, inform the Union Stock-Yards National Bank that you were expecting drafts to be drawn upon you for 19,000 and odd dollars or for $600?

A. No.

Q. Now, did you have an interview with any of the officers of that bank upon the 5th of October—Monday, the 5th of October, 1885?

A. I did, with Mr. Conrad.

Q. Will you please state when, at what time in the day, you had that interview?

A. The bank usually opens about 10 o'clock, and I had a little business in there. I went in there and while in there I——

Q. It was about 10 o'clock.

A. Yes, sir.

Q. You say the interview was with Mr. Conrad, the cashier?

A. Yes, sir.

Q. State what you said & what he said.

512 A. I went in to get some money for somebody about 10 o'clock and I saw Mr. Conrad and I said, Mr. Conrad, we expect a draft to-day of some 19 thousand odd dollars that we don't intend to pay. I said Bowen & Company are owing us a large amount of money, and brother had been writing to some of the firm of Bowen & Company and couldn't get any response, and we are going to close their account.

Q. Did you tell him the $19,000 draft was drawn upon the account of Bowen & Company; did you tell Mr. Conrad that at that time?

A. I did; yes, sir.

Q. What did he say?

A. He didn't have anything to say. He said, Will I send it back? that is all I can say. I said, Yes; because we don't intend to pay it.

Q. Then, what did you do after that; did you say anything to him then?

A. Not to my knowledge.

Q. What did you do?

A. I left the bank; went to the office; put on my coat and went into the yards.

Q. Did you have any other interview that day with any other officer of the Union Stock-Yards National Bank?

513 A. The only person I saw after that, I think, was Mr. Wash-

burn came to the door of our office, maybe, somewhere around noon. Mr. Miller was there about that time, and he spoke to brother, but his speaking to me I don't remember.

Q. How much does the firm of Bowen & Company now owe the firm of Rappal, Sons & Company?

A. In the neighborhood of about $4,000, to the best of my knowledge.

Q. Then, $4,000 is, after all amounts received, the proceeds of the three shipments of cattle which are in controversy, have been credited to Bowen & Company, is it?

A. Yes, sir; that is what I mean.

Q. Yet Bowen & Company owe you in the neighborhood of about——

A. $4,000.

Q. When you say you and your brother have no property, do you mean to say you have no assets, or that they are worthless, or what do you mean? You have that indebtedness of Bowen & Company to you, have you not?

A. Well, certainly we have that, and we have an account of——

Q. Any other assets or accounts?

A. Pat. Phalen owes us——

Q. How much?

A. In the neighborhood of $900; maybe a little over.

Q. You don't consider these assets valuable?

514 A. No; I would take 25 cents on the dollar on them.

Q. To your knowledge, as far as you know, was the interview which you have spoken of upon the morning of the 5th of October the first information that the Union Stock-Yards National Bank had from you or your firm of any financial difficulties?

A. Was that morning about 10 o'clock.

Q. So far as you know, that is the first they knew?

A. So far as I know.

Q. Do you know anything about the refusal of a draft for $6,000 and odd upon the Friday before?

A. Yes, sir; I do.

Q. And what do you know about it; what happened about that draft, so far as you know?

A. The draft came and was refused. We refused to pay it.

Q. Were you present when it was presented and refused?

A. I think I was.

Q. Did you have any conversation with any officers of the bank in relation to that draft?

A. Yes, sir; I took the draft down and said, We won't pay that draft to-day; that is the words.

515 Q. Did you have any further conversation upon any other day concerning that draft?

A. Next day Mr. James came up and said, You going to pay that draft? I said, No.

Q. Any further conversation?

A. That was all.

Q. Was there any explanation of it or anything further than simply you were not going to pay that draft?

A. Not to my knowledge.

Q. Do you know what these are which I now hand you, marked Exhibit 13 to T. E. Gillespie's testimony and Exhibit 18, T. E. Gillespie's testimony, and Exhibit 16, T. E. Gillespie's testimony?

A. They are scale tickets—Kansas City scale tickets—showing the firm who sold them on account of the owner and the party sold to.

Q. Have you ever seen them before?

A. I saw them on the dates those cattle came in.

Q. How did they come to you; did they or not come to you with the orders which have been shown you?

A. I can't say as to that, but they came the same day.

Q. Probably the same day?

A. Yes, sir; I am sure they came the same day.

By Mr. BROWN: These are offered in evidence.

516 Recross-examination:

Q. These scale tickets that you have just spoken of were used this way, were they? For instance, if your father or Mr. Bowen bought some cattle at Kansas City those cattle were weighed, and the weight put upon these tickets, the bulk and the price and the dates, where they were, and signed by the weigh-master Buffington, were they?

A. I think they were.

Q. Then, some one, whoever did the business, your father or Mr. Bowen or Mr. James, whoever it was, endorsed that ticket on the back to A. J. G. & Co., meaning A. J. Gillespie & Company, pay, giving the amount of money, the price per hundred, and sign it, in case Mr. Bowen signed it?

A. Yes, sir; that is what the ticket reads.

Q. And then A. J. Gillespie & Company paid that money, did they, as you understand the business?

A. I suppose they did.

Q. You hav-n't any doubt about it, have you?

A. No.

Q. Then, when they paid it they took from the party owning the cattle there an order, if it was Quinlan, Montgomery & Company, for the cattle like those I have shown you heretofore,

517 didn't they?

A. Not always.

Q. They did for these identical cattle, didn't they?

A. Yes, sir; in this controversy, they did.

Q. And then the cattle would come through, and, as a rule, on through bills of lading—that is, by an arrangement for through freight, if the cattle came from Texas to Kansas City, shipped on through rates to Chicago?

A. Usually.

Q. And then you received by mail the orders, as I have explained before, from A. J. Gillespie & Company, and when you got the cattle sold them?

A. We did, but we could have done that——

Q. These weigh-master's tickets were also mailed to you with the order, were they, as a rule, for the cattle?

A. Well, sometimes mailed with the order; sometimes with the bill.

Q. Sometimes with the bill. You said on Monday morning, October 5th, 1885, you told Mr. Conrad that the draft for 19 thousand and odd dollars was coming in against you. How did you know it?

A. We always got letters from W. P. Bowen & Company—that is, from Bowen & Company; they were directed—A. J. Gillespie & Company were always directed—by W. P. Bowen & Company
518 to send letters to us and let us know what was coming.

Q. Who? Did you get the letter from A. J. Gillespie & Company?

A. Yes, sir; and I don't know but we got a letter from Bowen & Company.

Q. Do you know who you did get it from?

A. No; I do not know; it was the usual way of both of them.

Q. I am asking you how you know that A. J. Gillespie & Company had drawn a draft against you for $19,505.62 on October 1st. How did you know that such a draft was coming in against you?

A. By the letter, but who drew that draft I didn't know until I saw the draft. All I knew was that Bowen & Company owed us this money, and these cattle came in as Bowen — Company's cattle and were sold as Bowen & Company's cattle and Bowen — Company got credit.

Q. They came in as Bowen & Company's cattle?

A. That is the way all of those——

Q. Hav-n't you just testified that you received an order from Gillespie & Company to deliver you these cattle?

A. Yes, sir.

Q. That is a fact, isn't it?

A. To the best of my knowledge, it is.

519 Q. These orders I have shown you—they came from A. J. Gillespie, didn't they?

A. Yes, sir.

Q. Now, who did you receive the letter from advising you of the draft of $19,505.62?

A. As I said before, I can't tell who did——

Q. Will you produce that letter?

A. I don't know but what some of the letters may be in evidence that you have here.

Q. Will you produce that letter?

A. If it is to be found I will. There is one advisement.

Q. Now, then, the letter that you mean was dated October 1st, 1885, and sent to you by whom?

A. By A. J. Gillespie & Company—cattle bought by Bowen & Company.

Q. I am asking you who sent you the letter.

A. I suppose some one in Gillespie's firm did it.

Q. Written on one of their letter-heads, isn't it?
A. Yes, sir; but it don't say who wrote that. All it says is cattle bought by Bowen & Company.
Q. When did you get that letter written October 1st, 1885?
A. Came the 3rd or 5th of October.
Q. The third or fifth?
A. Yes, sir.
Q. You had that letter Monday morning, didn't you?
520 A. I think it must have come in in the 8 o'clock mail.
Q. Monday morning?
A. Either Saturday or Monday; I don't know.
Q. Didn't you get that Saturday morning?
A. Not to my knowledge; no, sir.
Q. Are you prepared to say you didn't get it Saturday morning?
A. I said before I was not.
Q. Are you not prepared to say you didn't?
A. No.
Q. Have you any recollection as to when you did get it?
A. No.
Q. When would a letter, dated and mailed October 1st, 1885, at Kansas City naturally reach you in due course mail?
A. Some time during Saturday; has been that mail didn't come until the third day.
Q. Now, that letter advised you of just how much money A. J. Gillespie & Company had paid out on account of that shipment of cattle, didn't it?
A. It don't say here; all it says——
Q. Answer my question. Does it or does it not?
A. I can't say.
Q. You can't say that?
A. It don't say who did it.
521 Q. Did you rece-ve the letter which I show you, dated September 30th, 1885, showing a draft here for $6,231.10; did you receive that letter in due course of mail?
A. I suppose so; to the best of my knowledge.
Q. When did you receive it?
A. Don't know, but suppose the 2nd or 3rd of October.
Q. And you also received a letter, dated October 3rd, 1885, advising you of a draft for $691.70, and that came from A. J. Gillespie & Company, didn't it?
A. I guess it did.
Q. Don't you know that these three letters that I have just asked about all came to you from A. J. Gillespie & Company?
A. To the best of my knowledge, I think they did.
Q. And they were received in the regular course of mail by your firm?
A. Yes, sir.
Q. And you have produced them here yourself?
A. Yes, sir.
Q. Did you get any letter from your father concerning either of these shipments?

A. No, sir.
Q. Any telegrams?
A. No, sir.
Q. In no way concerning them?
A. No, sir.
522 Q. Did you from Mr. Bowen?
A. No, sir.
Q. From Milton James?
A. No; in regard to a letter, I wouldn't say.
Q. Letter or telegram?
A. From Bowen or James or father, or the shipper might bring a letter or something of that sort saying not to dispose of the cattle or what they cost or something like that, otherwise I don't know.
Q. You have already produced statements showing what the 3 lots cost?
A. Yes, sir; but that has nothing to do with it.
Q. Will you produce any letter or telegram that you have got from your father, Milton James, or William P. Bowen, from the commencement of this account to the end of it, here as evidence in this case?
A. I will if there are any to be found.
Q. Will you produce to the master here every letter or telegram sent you from Kansas City between April 20th and October 10th, 1885, either from your father, Milton James, or Mr. Bowen?
Q. I will do so if they can be found, willingly—be glad to do so.
Q. Did you have any instructions from your father or Mr.
523 Bowen or Mr. James or anybody else in Kansas City not to pay that $19,505.62 draft?
A. No, sir.
Q. Or the $6,231.10 draft?
A. No, sir.
Q. Or the $691.70 draft?
A. No, sir.
Q. You had no instructions from anybody?
A. No, sir.

By Mr. BROWN: You say you received no instructions not to pay these drafts. You stated in your examination by me that you did not pay them because Bowen & Company were owing you. When did you come to the determination not to pay those drafts?

(Objected to.)

A. We decided after we couldn't get any word—nothing from Bowen & Company saying they would put up any margins.
Q. When was that?
A. Within a week or 10 days of the 1st of October.
Q. Who decided it?
A. My brother and I.
Q. Upon consultation?
A. Yes, sir.
Q. Did you communicate that decision to any persons?

A. Not to my knowledge; I don't know as I did.

524 By Mr. MILLER: The three letters from A. J. Gillespie & Company, called for by Mr. Bisbee on cross-examination, and dated respectively, September 30th, October 1st, and October 3rd, and containing memoranda as to the 3 shipments of cattle in question, are offered as Exhibits 7, 8, and 9 to F. J. Rappal, Jr's testimony.

By Mr. BISBEE: Do you say that you made up your mind you wouldn't pay these 3 drafts about 10 days before?

A. No, sir.

Q. What do you say?

A. I said we made up our minds that if Bowen & Company wouldn't put up any margins or settle their account that we would have to hold their cattle for it—Bowen & Company's cattle.

Q. You communicated that to your father, didn't you?

A. I did not.

Q. Did anybody?

A. I couldn't swear as to that.

Q. Do you know anything about it; whether there was anything said to him about it or not?

A. I think, if my memory is right, that my brother wrote to Bowen & Company about it.

Q. And you have a copy of the letter?

A. No, sir.

525 Q. Haven't?

A. No, sir.

Q. Did you ever see the letter?

A. I don't know as I ever did see the letter.

Q. You made up your mind, then, about 10 days before these cattle came to the Stock-Yards that you would hold onto the next shipment of cattle that came through A. J. Gillespie & Company & wouldn't pay the drafts that A. J. Gillespie & Company drew; is that right?

A. No; didn't make up our mind to——

Q. Did you determine in your minds that when a shipment of cattle came into the yards through the operation of these orders from Gillespie & Company that you would take the cattle and sell them and keep the proceeds and not pay Gillespie and Company's drafts drawn by them?

A. No, sir.

Q. Didn't make up your mind to that?

A. No.

Q. Never made up your mind to that?

A. Don't make up my mind to it now.

Q. You never had any conference with your brother about that?

A. Not to mind, I did'nt. Our usual course of buisness is this: Throughout the country you are shipping on commission; you draw drafts on them; your account is liable to be overrun; we inquire, or some of the firm ask you, to put up margins; you

526 refuse; of course you have shipments coming right along. We have got to protect ourselves some way, and that is the only way to protect ourselves, by giving you credit for the stock you ship.

Q. That is all?

A. That is all.

Q. You didn't make up your mind at some time, then, to take cattle that came from Kansas City, delivered to you by the order of A. J. Gillespie & Company, cattle — Union Stock-Yards, Chicago, upon which drafts had been drawn by A. J. Gillespie & Company to sell those cattle and keep the proceeds and let the drafts go back, did you?

A. No, sir.

Q. You never had any conference with your brother about that, did you?

A. No, sir.

Q. You never spoke about it to him, did you?

A. Not directly; it didn't make any difference — Bowen & Company whatever they owned; whenever Bowen & Company shipped any cattle and they were known as such we made Bowen & Company good.

Q. You paid no attention to A. J. Gillespie & Company in this matter at all, did you.

A. Nothing.

Q. You didn't consider that you came into possession of these cattle through A. J. Gillespie & Company's order, did you?

A. No.

527 Q. But in point of fact you did come into possession of them through A. J. Gillespie & Company's order, didn't you?

A. Account of Bowen & Company.

Q. Did you come into possession of them through Gillespie & Company's order?

A. Yes, sir; account Bowen & Company.

Q. Is there any Bowen & Company in these orders?

A. Certainly not, but that is on the bill that they sent to us.

Q. Now, then, you knew that A. J. Gillespie & Company had paid out every dollar of the money—they had sent you a statement that you got by mail before the cattle came—didn't you?

A. I couldn't swear they paid a cent on them.

Q. Don't you know they paid every dollar of it?

A. Can't tell only what I see on paper.

Q. Only what you read?

A. That is all.

Q. All the evidence you have got is what you read; you knew Bowen—Bowen & Company—didn't have any money, and you knew the arrangement was that Gillespie & Company was to pay for these cattle and ship them, didn't you?

A. I don't know whether he was to pay them or not.

Q. You received these 3 letters from A. J. Gillespie & Company showing just what they paid for every critter, didn't you?

528 A. They came from Kansas City.

Q. By mail?
A. Yes, sir.
Q. And you received them regularly?
A. Yes, sir.
Q. These three drafts were drawn on you by A. J. Gillespie & Company, were they not?
A. Says so; account of Bowen & Company.
Q. That is the fact?
A. Yes, sir.
Q. You subsequently, you say, made up your mind to sell these 1,000 or 1,100 head of cattle, pocket the proceeds, and let the drafts go back?
A. No; I did not.
Q. That is what you did do, isn't it?
A. No, sir.
Q. Isn't that what you did?
A. No, sir.
Q. Didn't you sell those 100 head of cattle represented in these 3 shipments?
A. We did.
Q. And kept the money, didn't you?
A. And gave——
Q. And kept the money, didn't you?
A. We did, and put it over to Bowen & Company's account.
Q. That is to say, you credited it to Bowen & Company's account?
A. Yes, sir.
Q. Will you show that credit; have you got any account with Bowen & Company?
A. Yes, sir.
529 Q. You have got an account there with Gillespie & Company?
A. Account of Bowen & Company.
Q. The account you mean is the account headed Gillespie & Company, account Bowen & Company, Exhibit 4; that is what you mean, is it?
A. Yes, sir; that is what I mean.
Q. Now, then, the money itself you never paid to anybody; you put it to your credit in the Stock-Yards National Bank, didn't you?
A. I don't know about paying anybody; put it in the bank I know.
Q. And it wasn't paid out to anybody, was it; you didn't send the money to Gillespie?
A. No, nor to Bowen & Company.
Q. But you let the three drafts go unpaid, did you?
A. We did.
Q. And that is what you made up your mind to do 10 days before this transaction?
A. No, sir.
Q. When did you make up your mind to do that?
A. As I told you before, after we couldn't hear anything from the parties shipping right along—Bowen & Company.

Q. After you didn't hear from them. Now will you pro-
530 duce all the correspondence you have got?

A. I am willing, if there is anything I can find; there is nobody more willing than I am.

By Mr. BROWN: Is what you stated in answer to a question this: That same week, or about the 1st of October, you made up your mind that you would close up this account and let the drafts go back, and protect yourselves as far as you could, if after that time you didn't hear from Bowen & Company with some remittance?

A. We did.

Q. That is what you said?

A. That is what I said and meant.

Q. How long did you wait after that time to see whether you got a remittance from Bowen & Company before you made up your mind to let the drafts go back? When did you make up your mind as to these particular drafts?

A. A few days, I should think.

Q. Had you determined, as a matter of fact, before the time that the several drafts did go back whether or not you would pay them until they were presented to you; had you made up your mind?

A. No, sir.

Q. You and your brother made up your mind, under the
531 circumstances, to let the drafts go back where they severally came; is that so?

A. Yes, sir; that is so.

532 DECEMBER 2ND, 1886.

L. L. RAPPAL, being first duly sworn, testified on behalf of defendants as follows:

By Mr. MILLER: Your name in full.

A. Lawrence L. Rappal.

Q. Were you a member of the firm of Rappal, Sons & Company during the months of September & October, 1885?

A. I was.

Q. What was your business in connection with that firm?

A. We did a live stock commission business.

Q. What was your duty?

A. My duties were to sell all cattle.

Q. And you did, part of the time, soliciting?

A. Not in that year. I have before that.

Q. Did you know of the firm of W. P. Bowen & Company?

A. Yes, sir.

Q. Have you heard your brother testify as to the arrangement which he says his father made—told him had been made by W. P. Bowen & Company with A. J. Gillespie & Company?

A. I believe I did.

Q. Did he state that, as you understood it to be at the time?

A. Yes, sir.

Q. What did your father tell you the arrangement between
533 W. P. Bowen & Company and A. J. Gillespie & Company was in reference to the purchase and shipment of cattle?

A. He told me that he, Bowen & Company, made arrangements with Gillespie & Company to advance them the money with which to pay for the cattle they bought and to handle them in the yards for them for the consideration of $2.50 a car, and at times $5 a car.

Q. Was there any arrangement made between Rappal & Sons & Company & Bowen & Company for the payment of drafts drawn for the proceeds of cattle shipped through A. J. Gillespie & Company?

A. I believe Bowen & Company instructed Gillespie & Company to draw on us for the proceeds.

Q. Do you know why that was done?

A. As a matter of convenience, I presume.

Q. Did you know that A. J. Gillespie & Company had any other interest in these cattle than that stated by you as being in the arrangement made by Bowen & Company with Gillespie & Company?

A. No; I did not.

Q. That their interest was simply that of forwarder?

A. Forwarder.

Q. For Bowen & Company's?

A. Yes, sir.

Q. On whose account were these cattle shipped to you?

534 A. On Bowen & Company.

Q. For what purpose, if you know, were these cattle shipped by Bowen & Company through Gillespie & Company?

A. As a matter of convenience, I presume, and as a usual custom, and it was according to the arrangement they made.

Q. As the arrangement was stated to you, did Gillespie & Company have any interest in the proceeds, profits, or losses of the cattle?

A. They certainly had not.

Q. Who had?

A. Bowen & Company.

Q. Now, then, as a matter of fact, drafts that were drawn for the proceeds of the cattle sold by you from April until October were drawn by whom?

A. Usually by A. J. Gillespie & —.

Q. Now, then, do you know how the account between Bowen & Company and Rappal, Sons & Company stood about the 1st of October, 1885, in general?

A. About $29,000 in debt to Rappal, Sons & Company.

Q. How did that large debtor balance against Bowen & Company accrue—by reason of what?

A. By losses they made in buying and shipping cattle to Chicago.

Q. And on cattle shipped through whom?

535 A. Cattle bought by Bowen & Company and through Gillespie & Company.

Q. Drafts were drawn by whom?

A. They were drawn by Gillespie at Bowen's request and arrangement.

Q. So that debtor balance you have mentioned was due to the payment of drafts that were drawn by Gillespie & Company on you?

A. Yes, sir.

Q. Was there any arrangement, so far as you know, by which Rappal, Sons & Company were to do business in Kansas City with A. J. Gillespie & Company under the name of W. P. Bowen & Company?

A. Never heard of it; wouldn't have tolerated it for a minute.

Q. Was it ever suggested to you by anybody?

A. Never.

Q. There was, in fact, no such arrangement?

A. None, to my personal knowledge.

Q. Upon the books of your firm the account, including these cattle in controversy, appears under the name of A. J. Gillespie & Company, account Bowen & Company; whose account was that?

A. Bowen & Company's account.

Q. Simply made for Bowen & Company's account?

A. Certainly.

Q. Prior to the morning of the 5th of October, 1885, did you have any conversation with Mr. Washburn or Mr. Conrad or any
536 officer of the Union Stock-Yards National Bank in which you told them that there were large sums due you that you couldn't collect?

A. Never; I don't think I know.

Q. When did the officers of the bank, so far as you made any statements to them, first know that you were in some financial trouble by reason of this large sum due from Bowen & Company?

A. Monday noon was my recollection.

Q. Whom then did you tell of your trouble?

A. Mr. Washburn.

Q. Where was it?

A. In our office.

Q. Who was present besides Mr. Washburn?

A. Mr. Miller, and no one else.

Q. About what time of the day?

A. About noon, to the best of my recollection.

Q. You say I was present?

A. Yes, sir.

Q. In that conversation was anything said to Mr. Washburn about cattle coming through A. J. Gillespie & Company and your selling those cattle and giving him the money?

A. Gillespie's name was never mentioned.

Q. What was the subject of that conversation at that time? What did Mr. Washburn say and what did you say?

A. Mr. Washburn came into the office. He said I hear you are in trouble. I told him that we were little bit embarrassed.
537 He wanted to know what the matter was. I referred him to my brother. I had some little further talk with him, but I don't recollect the substance of it.

Q. Do you or not recollect that the conversation had reference to the note which the bank held against Rappal, Sons & Company?

A. Yes, sir; I believe i- did.

Q. Was anything said in that conversation with reference to these drafts drawn which had been refused?

A. I really couldn't say.

Q. Do you recollect of anything being said?

A. No; I do not.

Q. Was there or not any arrangement between Rappal, Sons & Company and the bank by which Rappal, Sons & Company were to take the proceeds of cattle that didn't belong to them and pay their debt to the bank?

A. No; there never was any such arrangement thought of or dreamed of.

Q. Why were these drafts drawn on account of these cattle in controversy not paid? I refer now to the $6,000, the $19,000, and the other smaller draft- which were drawn by A. J. Gillespie & Company on account of Bowen & Company. Why didn't you pay them?

538 A. Because they were drawn on Bowen & Company's account, who owed us considerable money, and we felt that we didn't intend to pay them.

Q. Had you had any correspondence with Bowen & Company or any member of the firm of Bowen & Company with reference to that debtor balance?

A. I wrote Bowen & Company one or two letters.

Q. Have you got copies of those letters?

A. No; I have not.

Q. Did you keep copies of all the letters you wrote?

A. No; I don't think we kept copies for 3 years.

Q. Do you know anything about that letter—where it is?

A. I haven't the least idea.

Q. What was the substance of those letters; what was the purpose of them?

A. I asked them to make good their account; give us some collateral or pay us some margins.

Q. Did they do it?

A. No; never responded at all.

Q. When were those letters written—about what time?

A. I think I wrote two letters about the middle of September.

Q. Did you hear your father testify yesterday with reference to an interview that took place at the Palmer House about the mid-

539 dle of October—15th or 16th—at which A. J. Gillespie, your father, A. J. Rappal, Jr., and yourself were present?

A. Yes, sir; I do.

Q. Were you present at the interview?

A. I was.

Q. Where did it occur?

A. In the rotunda of the Palmer House—there where the stairs——

Q. About what time?

A. 3 in the afternoon.

Q. Who was present at that interview?

A. My father, Mr. Gillespie, and Brother Fred. and myself.

Q. Who solicited the interview there?

A. A. J. Gillespie, by telegram.

Q. Do you recollect what conversation was had there between you?

A. I don't recollect all of it.

Q. As near as you can, say what Mr. Gillespie said to you and what you said to him.

A. I only remember one part.

Q. State what part.

A. It struck me as being very brassy; and that was that Mr. Gillespie says you call these three lots of cattle my cattle, meaning A. J. Gillespie & Company and not W. P. Bowen & Company, which will enable me to get this money out of the bank, and I will stand all losses of same while in transit between buying and selling prices

540 Q. Did he say anything about beating the bank?

A. Well, he says beat the bank out of this money.

Q. What did you say to that proposition? Did you or not entertain the proposition?

A. Certainly did not; wouldn't listen to it.

By Mr. BROWN: Was there any difference in the way in which you received these cattle which you say came on account of Bowen & Company and the other cattle which you handled in your business as commission men?

A. No, sir; no different those than thousands of other cattle that came as commission cattle and were sold there as such.

Q. Then they came to Rappal, Sons & Company to be sold on commission?

A. Yes, sir.

Q. Did you have any interest in the profits or losses?

A. None whatever.

Q. And you were not speculating in those cattle?

A. No, sir; our business is commission solely.

Q. Which was the commission you got for selling those cattle?

A. We get 50 cents a head on cattle. Cattle that come from other yards we get a quarter on.

541 Q. What was your interest in the firm of Rappal, Sons & Company?

A. One-third interest.

Q. Did you put any money into the firm of Rappal, Sons & Company?

A. $3,000.

Q. When?

A. On the first of January, 1884.

Cross-examination by Mr. BISBEE:

Q. What did your father put into the firm on the 1st of January 1884—how much money?

A. I think the same amount.

Q. $3,000?

A. Yes, sir.

Q. What did your brother put in?
A. $3,000.
Q. Where did you get the money you put in?
A. Father gave it to me, and give it to Fred. outright.
Q. At that time?
A. Yes, sir; it was rather in 1883 he gave us this interest.
Q. Did he give you the currency to put in?
A. Yes, sir.
Q. And gave your brother $3,000?
A. Yes, sir.
Q. And he put in $3,000?
A. Yes, sir.
Q. And you commenced business at the stock-yards—commission business?
A. Yes, sir.
542 Q. Did your firm ever do anything but a commission business?
A. Not to my knowledge.
Q. Did your father attend to the business at the stock-yards with you 2 boys until April, 1885?
A. Can't say he did.
Q. What did he do?
A. Outside all the time, more or less.
Q. What doing?
A. Occasionally buying cattle on his own account.
Q. Speculating?
A. Some.
Q. On his own account?
A. Yes, sir.
Q. And you and your brother attended to the commission business at the stock-yards?
A. Yes, sir.
Q. Now, then, in April, 1885, your father went to Kansas City, did he?
A. He was there; yes, sir.
Q. Did he go down there to speculate in cattle?
A. I couldn't say as to that.
Q. Did you hear him say anything about it—what he was going for——
A. Not when he went there.
Q. You don't know what he went for; he didn't tell you?
A. Don't think he did.
543 Q. He remained the senior member of your firm?
A. Being the older; yes, sir.
Q. Until you closed up the 1st day of October, 1885?
A. What do you mean by senior?
Q. The firm of Rappal, Sons & Company; I mean your father was the senior member of that firm up to that time.
A. You mean older?
Q. Yes; the older—the chief man of the firm.
A. No more chief than the balance.

Q. He was the father of the two sons, wasn't he?
A. Yes, sir.
Q. You say no more chief than you were?
A. No.
Q. Did he furnish, in the first place, all the money—the $9,000?
A. No; he did not.
Q. You say he gave you the $3,000?
A. I think I had some money coming.
Q. From whom?
A. From him.
Q. What for?
A. For services rendered.
Q. How old were you at the time?
A. About 23.
Q. How old was your brother?
A. About 21½.
Q. And you think your father must have owed you something, then, at that time?
A. I think when I have anything presented to me that it belongs to me.
Q. He then presented you with $3,000?
544 A. He gave me that much to put in as my interest.
Q. And gave your brother the same?
A. Yes, sir.
Q. That is all the money the firm had?
A. I don't know whether or not——
Q. Do you know of any other money you had?
A. No other money.
Q. Any other property?
A. The firm had no property.
Q. Now, then, about the middle of April or the 20th, 1885, your father went to Kansas City?
A. I think so.
Q. Did you ever hear any conversation between your father & W. P. Bowen, of Kansas City?
A. Between them?
Q. Yes.
A. Never did.
Q. Any conversation between your father and Mr. Bowen & Milton James at Kansas City?
A. I think not.
Q. Did you at any other place?
A. No; I did not.
Q. Did you ever hear any conversation between your father, Mr. Bowen, Mr. Milton James, or any one of them, with any member of the firm of A. J. Gillespie & Company?
A. No; I did not.
Q. You never saw them together anywhere?
A. I was not there.
545 Q. Did you ever have a letter from the firm of Bowen & Company?

A. Think we have.
Q. Where are they?
A. I couldn't say.
Q. You don't know where they are now?
A. No.
Q. How much money did your father put into the firm of W. P. Bowen & Company, at Kansas City?
A. I was not there and I couldn't tell.
Q. Do you know of his putting in a dollar?
A. I don't know that he didn't.
Q. Do you know that he did?
A. No.
Q. Did he take any money out of your firm to put into that firm?
A. Took money out of the firm, but I don't know what use he put it to.
Q. How long have you known W. P. Bowen?
A. I knew him, I think, from 2 to 3 months previous to April 20th.
Q. Where does he live?
A. Paola, Kansas.
Q. Is he worth a dollar?
A. His credit is very good.
Q. Did you ever know of his having a dollar in the world?
A. Yes; he shipped cattle direct from Paola.
Q. To be sold on commission?
A. Yes, sir; we understood they were his cattle.
546 Q. Do you mean to say that Mr. Bowen is now or for the last three years has been worth a ten-cent piece?
A. So credited to us.
Q. That is all you know about it, is it?
A. That is all I know about it.
Q. How long have you known Milton James?
A. Two or three years.
Q. What is his business?
A. Sort of a scalper, I believe.
Q. At Kansas City?
A. Yes, sir.
Q. Is he worth a dollar, or was he?
A. I have no way of telling.
Q. Did you ever know of his being worth a dollar?
A. I never knew he didn't have any.
Q. Did you ever know he did?
A. Certainly; must have had.
Q. Do you mean to say that he is worth any money or ever was?
A. Yes; I think he was.
Q. How much?
A. I don't know, I am sure.
Q. Give us your best judgment.
A. I should think a thousand or two dollars.
Q. You don't know whether there was ever a dollar of capital

contributed to the firm of W. P. Bowen by either your father, Milton James, or Brown; did you ever hear of a dollar?

A. W. P. Bowen himself gave some mortgage, I believe, to—he had a mortgage on property; I don't know what he did with it.

547 Q. Second mortgage, was it not, on property at Paola, the first mortgage being more than the property was worth. That is the fact?

A. I don't know.

Q. That is the way you understood it?

A. No, sir; it is not. I supposed it was good.

Q. You never heard of a dollar being realized out of it, did you?

A. Never heard of anybody trying to realize anything out of it.

Q. Did you ever hear of a dollar being realized?

A. I said no.

Q. Now, then, pretty soon after you- father went to Kansas City shipments of cattle were made to your firm at the Stock-Yards in Chicago, were they, which you obtained from the Stock-Yards Company upon an order signed by A. J. Gillespie & Company?

A. No; not from Gillespie & Company. We had a good many cattle from a dozen different firms there besides Gillespie.

Q. Now, then, didn't you get cattle—quite a number of them—upon the order of A. J. Gillespie & Company?

A. I couldn't say as to that.

Q. You don't remember that, do you?

A. What?

Q. Whether you got cattle that way or not?

A. I stated some we got that way.

Q. In order to get possession of cattle at the Union Stock-Yards you have to have an order from some person who has the

548 control of the cattle, don't you, that you present at the office and the cattle are turned over to you for sale?

A. From the owner?

Q. Yes.

A. Not always from the owner; no, sir.

Q. Well, from some person?

A. Frequently a commission house.

Q. Didn't you, as a matter of fact, between April 20th and October 1st, receive and sell a great lot of cattle that were delivered to you upon the order of A. J. Gillespie & Company?

A. Can't say they were or——

Q. Did you receive any during that time?

A. Yes, sir.

Q. When you received cattle in that way upon the order of A. J. Gillespie & Company there was a draft drawn, wasn't there, by A. J. Gillespie & Company upon your firm? Is that true?

A. I couldn't say as to that, because I didn't keep the books.

Q. You don't know anything about that?

A. No.

Q. Now, then, look at this account that your brother has presented, headed A. J. Gillespie & Company account Bowen & Com-

pany. The drafts that are charged in that were drawn by A. J. Gillespie & Company, were they?

A. I don't know.

Q. You don't know anything about that?

549 A. No.

Q. The cattle that are credited in that account you got out of the stock-yards at Chicago on the order of A. J. Gillespie & Company, didn't you?

A. I don't know that.

Q. You don't know anything about it at all?

A. I knew the cattle as W. P. Bowen's cattle.

Q. Do you know how you got the cattle from the stock-yards?

A. In the regular course of business.

Q. If A. J. Gillespie & Company paid for those cattle in Kansas City and the man that he paid the money to turned the cattle over to Gillespie & Company and they were shipped to Chicago for the account of Gillespie & Company and Gillespie & Company gave you an order on the Stock-Yards Company for those cattle and you took that order and went to the office of the Stock-Yards Company and got the cattle, then they were pretty near Gillespie & Company's cattle, were they not?

A. No, sir.

(Objected to.)

Q. Were you at Kansas City when any of these cattle were shipped?

A. I think not.

Q. Saw none of them shipped, did you?

A. No.

550 Q. Look at the account I show you for 133 head of cattle, dated October 2nd, 1885, and state whether that account was made by your firm.

A. Looks like the handwriting of the book-keeper.

Q. Was it or was it not made by your firm?

A. I don't know.

Q. You don't know anything about that—that is, I refer to Exhibit A to complainant's testimony, account showing net proceeds, $5,880.25; you don't know whether that was made by your firm or not, do you?

A. I say it looks like the book-keeper's handwriting; no, I don't know.

Q. Now, did you on or about October 1st receive that 133 head of cattle?

A. From this statement I should say that was on October 2nd, Friday.

Q. Who sold those cattle?

A. I did.

Q. Did you sell them as a commission merchant?

A. Yes, sir.

Q. And the proceeds were that amount, $5,880.25?

A. I don't know what the proceeds were.

Q. You don't know anything about that?
A. No.
Q. Who did you sell the cattle to?
A. I could tell by looking up the books.
Q. Well, do you know now who you sold them to?
551 A. I do not.
Q. Did you receive those 133 head of cattle upon the written order of A. J. Gillespie & Company?
A. I don't know.
Q. As a matter of fact, did the firm of W. P. Bowen & Company, at Kansas City, contract for those cattle of A. J. Snider & Company and did A. J. Gillespie & Company pay for those cattle and did A. J. Gillespie & Company receive the transfer from A. J. Snider & Company of those cattle and were they shipped to your firm for sale and about that time was a draft, Exhibit D, drawn on your firm for the amount of money which A. J. Gillespie & Company paid out for those cattle?
A. I have no personal knowledge of it.
Q. Do you know of that draft for $6,231.10 being presented to your firm on the 2nd day of October, 1885?
A. I think I do.
Q. Do you remember it?
A. Don't remember the amount.
Q. Do you remember the draft itself?
A. I can't say that I do.
Q. Did you take the proceeds of those 133 head of cattle and deposit the money in the Union Stock-Yards National Bank?
A. No; I didn't.
Q. Did any one for you?
A. That I couldn't say.
Q. Was it deposited there by your firm?
A. That I don't know either.
552 Q. What was done with that money—proceeds of those cattle?
A. I never could tell.
Q. Have you any knowledge of what became of the proceeds of those 133 head of cattle?
A. No personal knowledge.
Q. Have you any knowledge, as a member of the firm of Rappal, Sons & Company, what became of those proceeds?
A. I suppose they went in the usual way.
Q. I am asking if you have any knowledge of what became of the proceeds of those 133 head of cattle which you say you sold on October 2nd, 1885; I want to know if you know what became of that $5,880.25.
A. No; I do not.
Q. No knowledge of where it went to, have you?
A. No; I hav-n't.
Q. You don't know whether it went into the Union Stock-Yards National Bank or not?
A. No.

Q. And if it didn't go there you don't know where it did go, do you? Was it ever remitted in any way to A. J. Gillespie & Company?

A. No reason for sending it to Gillespie & Company.

Q. Was it ever remitted?

A. No; not to my knowledge.

Q. Were you presented on the same day, October 2nd, that you received that money with this draft for $6,231.10, signed by A. J. Gillespie & Company?

A. That I can't say.

553 Q. Did you pay that draft?

A. That I don't know either.

Q. You don't know whether it was paid or not, do you?

A. I didn't attend to that part of the business.

Q. You have no knowledge or information as to whether that draft has been paid or not?

A. I couldn't say.

Q. Did you on the third of October, 1885, receive 810 head of cattle for which you received an account of sale marked Complainants' Exhibit B?

A. Yes, sir.

Q. Did you receive those cattle upon written orders signed by A. J. Gillespie & Company?

A. Not to my knowledge we didn't.

Q. Is that the way they came into your possession?

A. Sometimes——

Q. Is that the way those 810 head of cattle——

A. That I don't know.

Q. No knowledge about it?

A. No.

Q. Look at the papers I now show you, one of which is an order from Quinlan, Montgomery & Company to turn over 21 cars of cattle to A. J. Gillespie & Company; the other the order of Hanford Cattle Company to turn over 16 cars of cattle to Gillespie & Company, and upon the backs of which it says to deliver to Rappal, Sons & Company, signed Gillespie & Company, and state if

554 it was through those orders that you got those cattle?

A. I presume it was.

Q. And you sold those cattle on the same day, did you?

A. I think so.

Q. Who sold them?

A. I did.

Q. How soon on the morning of October 2nd did you sell those cattle, or October 3rd—how early in the morning?

A. I think it was about noon.

Q. About noon of October 3rd, and what I show you, Exhibit B, is the account of sale of those cattle, realizing $16,519.69?

A. I think so.

Q. You think it is correct, do you?

A. Yes, sir.

Q. What did your firm do with that $16,519.69?

A. That I don't know.

Q. Did you go into the Union Stock-Yards National Bank?

A. That I have no personal knowledge of.

Q. Have you any knowledge of what became of that money?

A. Only in a general way; suppose it was deposited same as all monies are that we collect.

Q. Did you remit any portion of that money to A. J. Gillespie & Company?

A. There were no reason for remitting it.

Q. Did you remit it?

555 A. No; there was no reason for it.

Q. On the same day was that draft presented to you as the amount which A. J. Gillespie & Company paid for those cattle they turned over to you on those orders, $19,505.62?

A. No, sir; it was not.

Q. You never saw that draft before, did you?

A. Not on Saturday.

Q. Was it presented on Monday?

A. Yes, sir.

Q. Did you pay it?

A. No, sir.

Q. Was it ever paid?

A. No, sir; it was not; didn't owe the party.

Q. You had got that money, hadn't you?

A. No, sir.

Q. Had not got the money?

A. Got the money—the proceeds of the cattle.

Q. Proceeds of the cattle?

A. Simply what we advanced to Bowen & Company.

Q. And you let that draft go?

A. Yes, sir.

Q. Although you got the cattle through the order of A. J. Gillespie & Company?

A. By Bowen & Company's instructions.

Q. But that is the way the cattle came into your possession; is that correct?

A. Yes, sir; looks that way.

Q. Did you also on the 6th day of October send another

556 account for 122 head of cattle to A. J. Gillespie & Company, account Bowen & Company, $1,857.27?

A. Should judge so from that statement.

Q. You received those cattle?

A. Yes, sir.

Q. From the order signed A. J. Gillespie & Company?

A. I won't say we received them from any such order, for I don't know.

Q. Look at these orders, one of which A. J. Snider turned over one car of cattle to A. J. Gillespie & Company and the other Mt. Joy, White & Company turned over 4 cars of cattle to A. J. Gillespie & Company and A. J. Gillespie & Company gave you an order for

the cattle in both instances, and state if those are not the orders upon which you got those cattle.

A. I should say they were.

Q. And that $1,857, what did you do with it?

A. I didn't do anything with it.

Q. Deposited it in the Union Stock-Yards Bank?

A. I presume it was.

Q. And the draft was presented to you on Monday, October 5th, wasn't it, for $691.70 for payment?

A. That draft I don't remember.

Q. Nothing about it?

A. No.

Q. Was it paid?

A. I think not.

557 Q. What was your overdraft at the bank for 3 or 4 months preceding October 1st?

A. I don't know what they were.

Q. Would they average about $15,000 or $20,000?

A. Don't think they would.

Q. How much would they average?

A. Well, they would—I am not able to say.

Q. You don't know anything about it, do you?

A. I have gone in there a few times to ask Mr. Washburn or Mr. Conrad to accom-odate us with a loan over night or for a day or two, but I have no distinct memory as to amounts; couldn't say whether overdrawn $1,000 or $10,000.

Q. Isn't it true that on September 30th and October 1st you were overdrawn about $23,000 at the bank?

A. I don't know as it is true or not.

Q. Is it true that you owed the bank about $8,000, represented by a note at that same time?

A. We owed them some note; couldn't say as to the amount.

Q. Is it true that you owed the bank in all about $29,000 or $30,000 the last of September, 1885, in your overdrafts and in your note?

A. I don't know; I have no personal knowledge of it.

Q. Is it true that about $25,000 was realized out of these cattle and has been deposited in the bank?

A. I presume it was in the usual course of business.

558 Q. Is it true that then you owed the bank about $4,000?

A. I don't remember now.

Q. Is it true that the bank wanted you to give security for the balance of that debt—about $4,000?

A. When?

Q. About the 1st of October.

A. No, sir.

Q. Is it true that your father did make a new note to the bank and secure that by a mortgage on all the real estate he had in Will county?

A. When?

Q. About the 6th, 7th, or 8th of October, 1885.

A. He gave a mortgage; I don't know on just what.
Q. For about $4,000 balance due the bank, wasn't it?
A. And part due the Stock-Yards and Transit Company.
Q. And also $4,000 or $5,000 due the Stock-Yards & Transit Company for freight & yardage?
A. Yes, sir.
Q. And gave a mortgage to them at the same time, didn't he?
A. I think he did.
Q. After those two mortgages were given did you or your father or brother have any property?
A. None whatever.
Q. Have you had any since?
A. Not any.
559 Q. Neither of you?
A. None of us.

By Mr. BROWN:

Q. Have you had, since that time, any sums due the firm of Rappal, Sons & Company?
A. We have quite a number of accounts that are not very good from different shippers.
Q. And that is all the assets?
A. Such shippers as Bowen & Company.
Q. How much from Bowen & Company?
A. I think $4,000 or $5,000.
Q. And you have other smaller assets due you?
A. Yes, sir; $900.
Q. Which you don't consider very good?
A. They are not very good.

By agreement of counsel the taking of further testimony in this cause is adjourned to Saturday, December 4th, 1886, at 12 o'clock p. m.

560 DECEMBER 31ST, 1886.

Counsel present as before.

W. H. BOPREY, being first duly sworn, testified on behalf of defendants as follows:

By Mr. BROWN: What is your full name?
A. William H. Boprey.
Q. What is your residence?
A. *M* 3108 Prairie Ave.
Q. Chicago?
A. Yes, sir.
Q. What is your business?
A. Individual book-keeper at the Union Stock-Yards National Bank.
Q. How long have you been so?
A. Well, it is 3 years & a half.

Q. I show you a paper and ask you if you have ever seen it before?

A. Yes, sir.

Q. What is it?

A. It is a transcript—a statement from the ledger account of Rappal, Sons & Company with the Union Stock-Yards National Bank.

Q. From what ledger?

A. From the ledger of the bank.

Q. The Union Stock-Yards National Bank?

A. Yes, sir.

Q. Is that ledger in your keeping?

A. Yes, sir.

Q. Who made that transcript?

561 & 562 A. I did, sir.

Q. Is it a correct transcript from the books of the bank?

A. Yes, sir.

Q. When did you make it?

A. I think it was last month or the first of this month. It was in the fore part of this month.

Q. Did you make it at any request and at the direction of the officers of the Union Stock-Yards National Bank?

A. Yes, sir.

Q. I will ask you to explain this transcript and tell me what the figures mean which are under the heading "checks," opposite the various dates?

A. The various amounts under the heading "checks" and opposite the various dates are the aggregate of the checks presented upon the given date drawn by Rappal, Sons & Company upon their account in the Union Stock-Yards National Bank.

Q. What do the figures under the heading "deposits" and opposite the various dates mean?

A. These amounts under the heading "deposits," opposite the various dates, represent the aggregate of the deposits made upon that particular day by Rappal, Sons & Company in their account in the Union Stock-Yards National Bank.

563 Q. What do the figures represent under the heading "balance" and opposite the various dates mentioned?

A. The figures under the heading "balance," opposite the various dates, from January 1st, 1885, to October 9th, 1885, represent the balance of the account at the close of each day under the separate dates. The figures in red ink are debit balances—that is, they show that at the close of the day, on each of the dates opposite which they stand, the account of Rappal, Sons & Company with the Union Stoed-Yards National Bank was overdrawn. The figures in black ink represent credit balances—that is, they show that on the date opposite which they appear there was this balance to the credit of Rappal, Sons & Company with the Union Stock-Yards National Bank at the end of the day.

Q. And this account is the entire ledger account of Rappal, Sons and Company with the Union Stock-Yards National Bank between January 1st, 1885, and October 9th, 1885, is it not?

A. Yes, sir.

564 By Mr. BROWN: I offer this paper in evidence and ask that it may be marked Exhibit 1 to W. H. Boprey's testimony.

Counsel for complainants and counsel for defendants agree that the said paper marked Exhibit 1 to W. H. Boprey's testimony may be admitted in evidence as of the same effect as the original ledger from which the transcript is made, it being understood, however, that counsel for complainants has the right to inspect the original ledger account and compare said transcript with the same if he deems fit, and should any portion be found — correct the right to correct the same.

Cross-examination waived.
Complainants rest and defendants rest.

564½ UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the Circuit Court thereof. In Chancery.

A. J. GILLESPIE, THOMAS F. GILLESPIE, and LOUIS J. GILLESPIE, Co-partners Doing Business under the Firm Name of A. J. Gillespie & Co.,

vs.

UNION STOCK-YARDS NATIONAL BANK, a Corporation Organized under the Laws of the United States.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause that the depositions of all and any witnesses whose depositions may be desired by either the defendant or the complain-ts in rebuttal in said cause may be taken, to be read in evidence in the above-entitled cause, without the issuing of a commission and without notice, upon oral interrogatories before any notary public or other officer authorized by law to take depositions, who may be selected by said defendant, at Kansas City, in the State of Missouri, at the office of Warner, Dean & Hagerman, in said Kansas City, or any other place in said Kansas City that may be here-
565 after agreed upon by the respective solicitors of said complainants and defendant, and that the examination of such witnesses shall be begun on Friday, the 10th day of December, A. D. 1886, at ten o'clock in the forenoon, and shall continue from day to day until completed.

Dated December 6th, 1886.

—— ——, *Complainants' Solicitors.*
BISBEE, AHRENS & DECKER,
Defendant's Solicitors.

PECKHAM & BROWN,
For Union Stock-Yards Nat'l B'k.

Deposition of witness produced, sworn, and examined at the office of Warner, Dean & Hagerman, in the city of Kansas, in the county of Jackson and State of Missouri, before me, the undersigned, notary public, in a certain cause now pending in the U. S. circuit court, in the city of Chicago, in the county of Cook and State of Illinois, between A. J. Gillespie and Company, plaintiff, and the Union Stock-Yards National Bank of Chicago, Illinois, defendant, on the part of the defendant.

Examination of Peter Connelly.

PETER CONNELLY, of lawful age, being sworn and examined on the part of the defendant, deposethand saith:

Direct examination by Mr. BROWN:

Q. Your full name is Peter Connelly, is it not?

A. It is.

566 Q. You have been sworn in this case, I believe, have you not?

A. I have.

Q. And in your examination you introduced certain papers. I propose now to ask you as a witness called by the defendants for certain papers, some of which were previously introduced and some of which were not. Have you in your possession a letter-press copy of a letter written by the Kansas City Stock-Yards Bank to the Union Stock-Yards Bank, Chicago, and dated September 30, 1885?

A. September 30 would be 9, 30. I have such a letter.

Q. Where is the copy?

A. In a letter book used at that time without any particular formality as to name. The copy of the letter is on page 229 of the book I now hold in my hands.

Q. Which is the letter-book used by the Kansas City Stock-Yards Bank?

A. Yes, sir.

Q. And that is a press copy of the letter referred to?

A. Yes, sir.

Q. Will you please read it?

Witness reads the letter: "9, 30, 1885. Union Stock-Yards National Bank, Chicago, Ill.

And then the ordinary caption and form for remittances and items stated below.

Rappal	$6,231 10
Kennan & H.	1,000 00
567 First National Bank	149 00
Paxton, S. H. C. A.	400 00
Geo. Adams & Burke	7,275 01
Fowler	1,037 48
Darlington	1,000 00
Total	$17,092 59

Q. When was that letter sent?

A. Well, it was sent on the 30th of September, according to the press copy; it was sent out the same night it was written.

Q. During that night or evening?

A. Yes, sir.

Q. Have you in your possession a letter from the Union Stock-Yards National Bank to the Kansas City Stock-Yards Bank dated October 2, 1885?

A. I have.

Q. Will you produce the letter?

(Letter produced.)

A. I offer the letter in evidence.

(It is stipulated that a copy of this letter may be put into the record and the original may be marked "Exhibit A" of the deposition taken December 10, 1886.)

The following is a copy of the letter of October 2, 1885:

CHICAGO, 10, 2, 1885.

P. Connelly, Esq., A. cashier, Kansas City.

DEAR SIR: Your favor of the 30th is received, with enclosures as stated. I remit to Am. Exch., N. Y., for your credit for items 568 as specified below.

Yours truly, G. E. CONRAD, *C'sh'r.*

Us	$149 00
Darlington	1,000 00
Fouler	1,037 48
A. & B.	7,275 01
Paxon, S. & Co.	400 00
*Rappal	6,231 10
	$17,092 59
	6,231 10
	$10,861 49

Exhibit A.

Q. Have you in your possession, Mr. Connelly, a copy of a telegram from the Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank, Chicago, dated October 3, 1885?

A. Here is a copy of a telegram in the same letter book which reads: "October 3, 1885. George E. Conrad, cashier Union Stock-Yards National Bank, Chicago, Ill.: Deposit our credit $2,500, Commercial National. P. Connelly, A. cashier." Marked "paid."

Q. Have you a telegram from the Union Stock-Yards National Bank to the Kansas City Stock-Yards Bank, dated October 3, 1885?

A. I have none dated October 3rd.

*Erased in original.

Q. Have you a telegram which you think was received upon October 3rd—October 3rd, 1885?

A. I couldn't express an opinion as to that. I have a telegram which I will submit, and which I understand to be an answer to the message sent by us, which I have just read.

Q. Will you produce the same?

569 A. Yes, sir.

Mr. BROWN: I offer the said telegram in evidence and ask that it be copied into the record and marked "Exhibit B" to the deposition taken December 10, 1886.

The following is a copy of said Exhibit B:

Western Union Telegraph Company.

Number.	Sent by—	Received by—	14 col.
Yd. 25.	H. C.	U. D.	2.30 p. —.

Received at 9, 3, 1885.
Dated Union Stock-Yards, Ill., 3.

To Kansas City Stock-Yards:

Rappal sixty-two hundred not paid. Have nothing to remit Com. Nat. Bank.

G. E. CONRAD, *Cashier.*

Q. Have you a letter from the Union Stock-Yards National Bank, dated October 3, 1885?

A. I have such a letter.

Q. Will you produe it?

A. Yes, sir.

(Counsel for defendant offers the same in evidence and asks that it be marked "Exhibit C" to the deposition taken December 10, 1885, and that it be copied into the record.)

The following is a copy of Exhibit C:

Union Stock-Yards National Bank.

Elmer Washburn, pres't; George E. Conrad, cashier; Charles Jameson, ass't cashier.

CHICAGO, 10, 3, 1885.

Peter Connelly, Esq., cashier, Kansas City.

570 DEAR SIR: I enclose and returns bills as stated below.

Yours truly, C. JAMESON, *A. Cash'r.*

Rappal	$6,231 10
Pro. fees	2 31
	$6,233 41

Please remit fees.

Q. Have you a copy of a letter from the Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank, dated October 2, 1885?

A. I have a letter here dated "10, 2, 1885, Union Stock-Yards National Bank, Chicago, Illinois."

Q. In the same letter book?

A. Yes, sir. I will read the items referred to, page 261 of our letter-press book:

George Adams, Burke & Co.	$13,647 14
Keenan & H.	291 40
You	1,000 00
Thomas Armour	50 00
McIlhaney	1,000 00
Rappal	19,505 62
Stafford	2,500 00
Swift	4,512 85
Total	$42,478 05

Q. When was that letter sent?

A. Well, I should say it was sent on the 2nd.

Q. In the afternoon, as usual?

A. Yes, sir.

Q. Have you a copy of a telegram sent to the Union Stock-Yards National Bank from the Kansas City Stock-Yards Bank, dated October 3, 1885?

A. Yes, sir.

Q. Read it.

571 A. "October 3, 1885. George E. Conrad, cashier, Union Yards, Chicago: On receipt of funds, deposit as requested and $15,000 more. Peter Connelly, A. cashier." Marked "paid."

Q. Have you any letter dated October 2, 1885, except the one you read, from the Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank?

A. I don't find any.

Q. Have you any letters, dated October 3, 1885, from the Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank?

A. Here is a letter, page 270.

Q. Read it.

A. The items are:

McFarland	$2,187 00
Paxon, Shattuck & Co.	450 00
Rappal, Sons & Co.	691 70

Q. Have you any other letter dated October 3, 1885?

A. No, sir.

Q. Have you a telegram from the Union Stock-Yards National Bank to the Kansas City Stock-Yards Bank, signed "Jameson," dated October 5, 1885?

A. I have a telegram here signed "C. Jameson, 10, 5, 1885."

Q. Please produce the same.
A. Here it is.

(Counsel for defendant offers the same in evidence and asks that it be copied into the evidence and marked "Exhibit D" of deposition taken December 10, 1886.)

(The following is a copy of Exhibit D):

572 *Western Union Telegraph Company.*

No.	Sent by—	Received by—	Col. 2 p. m.
38 yd.	Hu.	O.	10, 5, 1885.

Received at ——.
Dated U. S., Ills., 5.

To P. Connelly, ass't cashier:
Rappal nineteen thousand odd not paid.

C. JAMESON,
A. Cashier.

Q. Have you a copy of a telegram from the Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank, Chicago, dated October 5, 1885?
A. I have.
Q. Have you more than one?
A. I only see one.
Q. Will you please read the same?
A. Well, it is in the letter book, on page 273: "Oct. 5, 1885. George E. Conrad, Union Yards, Chicago, Illinois: Is Rappal nineteen thousand odd paid? Letter October 5. P. Connelly, A. cashier."
Q. The telegram which is marked Exhibit D, October 3, 1885, is probably an answer, is it not, to the telegram sent by you and just read?
A. I should take it so.
Q. Have you another telegram from the Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank, dated October 5, 1885?
A. I have one, page 274 of the letter book.
Q. Will you please read the same?
A. "October 5, 1885. George E. Conrad, Union Yards, Chicago, Illinois: Get proceeds 34 cars cattle from Rappal. Credit amount on draft and advise at once. Signed P. Connelly, A. cashier."
573 Q. Have you any other telegram than that already offered from the Union Stock-Yards Bank, or any officer of the same, dated October 5, 1885?
A. I have a telegram dated 10, 5, 1885, signed George Conrad, cashier.

Q. Have you any other telegram than the one which has been offered in evidence and the one from the Union Stock-Yards National Bank, dated October 5, 1885?

A. I have not.

Q. Have you searched for another?

A. I have.

Q. Mr. Conrad, the cashier of the Union Stock-Yards National Bank, in addition to the copies of the two telegrams which you have produced, dated October 5, 1885, produced in evidence in this case a copy of a third telegram purporting to have been sent upon that day. That copy reads as follows: "October 5, 1885. P. Connelly, Kansas City: Say cattle were sold Saturday and they hold proceeds against account Bone & Co. Draft nineteen thousand and odd and six hundred odd go to protest. G. E. Conrad, cashier." You say you made search and found no other of that date?

A. That is what I say. I say I don't recollect of receiving such a telegram, and I say still further I was very particular to preserve all of the correspondence, as you see everything else is in pretty good order. I don't recall of ever receiving a message so worded.

(Counsel for defendant offers the telegram last produced
574 by Mr. Connelly, dated October 5, 1885, and asks that it be copied into the record, and that it be marked "Exhibit E" to deposition taken December 10, 1886.)

The following is a copy of Exhibit E:

Western Union Telegraph Company.

No.	Sent by.	Received by.	33 col. 3.56 p.—

Received at——.
Dated U. S. Yards, Ill., 5.

To P. Connelly, acting cashier:

Firm say cattle were sold Saturday, and they hold proceeds against account Bone & Co. Drafts nineteen thousand odd & six hundred odd protested; don't think they have anything to pay with.

GEO. CONRAD, *Cash'r.*

Q. Have you a letter from the Union Stock-Yards National Bank to the Kansas City Stock-Yards Bank, dated October 5, 1885?

A. I have such a letter.

Q. Will you produce the same?

Witness produces same.

(The counsel for defendants offer the same in evidence, and asks that it be copied into the record and marked "Exhibit F" to deposition taken December 10, 1886.)

The following is a copy of Exhibit F:

Union Stock-Yards National Bank.

Elmer Washburn, pres't; George E. Conrad, cashier; Charles Jameson, ass't cashier.

CHICAGO, 10, 5, 1885.

P. Connelly, A. cashier, Kansas City, Mo.

575 DEAR SIR: Your favor of the 1st and 2nd received, with enclosures as stated. I remit to Com'l Nat., Chi., $17,500.00. Am't exch., N Y., $50,715.73, for your credit for items as specified below.

Yours truly, GEO. CONRAD, *Cashier.*

Com'l, Chi.	$30,000	00	ent. for.
Coll. Thomas Armcur	2,217	34	
Fowler	4,512	89	
Swift & Co.	12,418	59	
McFarland	607	37	
* Rappal Sons	19,505	62	
Stafford	2,500	00	
Harrison	50	00	
McIlhaney & Co.	1,001	00	
Keenan & H.	291	40	
A. & B.	13,617	14	
Us	10,000	00	
	$87,721	35	chg. & ent.
	19,505	62	
	68,215	73	

Q. Have you another from the Union Stock-Yards National Bank, Chicago, to the Kansas City Stock-Yards Bank, dated October 5, 1885?

A. I have.

Q. Will you produce it?

(Witness produces letter.)

(Counsel for defendants offers this letter in evidence, and asks that it be copied into the record, and that it be marked "Exhibit G" to deposition taken December 10, 1886.)

(The following is a copy of Exhibit G:)

* Erased in original.

Union Stock-Yards National Bank.

Elmer Washburn, pres't; George E. Conrad, cashier;
576 Charles Jameson, ass't cashier.

CHICAGO, 10, 5, 1885.

P. Connelly, Esq., A. cashier, Kansas City.

DEAR SIR: Your favor of the 3rd is received, with enclosures as stated. I remit to Am. Exch., N. Y., for your credit for items as specified below.

Yours truly, —— ——, *Cashier.*

*Rappel	$691 70
Paxon & Co.	450 00
McFarland	2,001 87
	$3,143 57
	691 70
	$2,451 87

Q. Have you a letter from the Union Stock-Yards National Bank to the Kansas City Stock-Yards Bank dated October 6, 1885?

A. I have such a letter.

Q. Will you produce the same?

A. Yes, sir.

(Counsel for defendants offers the same in evidence and asks that it be copied at length into the record, and that it be marked "Exhibit H" to the deposition taken December 10, 1886.)

Union Stock-Yards National Bank.

Elmer Washburn, pres't; George E. Conrad, cashier; Charles Jameson, ass't cashier.

CHICAGO, 10, 6, 1885.

P. Connelly, Esq., A. cashier, Kansas City.

577 DEAR SIR: I enclose and return bills as stated below.

Yours truly, GEO. CONRAD, *Cash'r.*

Rappal	$19,505 62
Fees	2 31
	$19,507 93

*Erased in original.

Rappal	691 70
Fees	2 31
	$691 01

	***19,505 62**
	691 70
	20,197 32

Please remit fees.

Q. I will ask you concerning this last letter produced by you whether the figures in pencil upon the face of said letter were upon said letter when received by you, or are they your figures?

A. Our figures.

Q. The figures of the Kansas City Stock-Yards Bank?

A. Yes, sir.

Q. Have you copies of any letters from the Kansas City Stock-Yards Bank to the Union Stock-Yards Bank, Chicago, dated October 5 or 6, 1885? If so, please read them in order.

A. Here is a letter of October 5th, remitting protest fees for $2.31, which are the protest fees on the $6,231.10 draft.

Q. You received a letter dated October 3rd, 1885, presumably October 3rd, which contained a request for $2.31 protest fees, on a draft for $6,231.10; have you a copy of your reply to that?

A. Yes, sir.

Q. Read it.

A. October 5, 1885. G. E. Conrad, Commercial National Bank. 16841. P. Connelly. Hopkins. Mr. Hopkins wrote the letter and signed my name. The letter was making remittances on 578 returns for the various items the Kansas City Bank received in that letter of the 10th and 2nd, $121.00; $45 protest fees; Rappal, $2.31, making a total of $168.41.

Q. Have you any other—a copy of any other—letter from the Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank dated October 5th, 1885?

A. Here is another letter dated October 5, 1885, and contains the following items for collection and remittance, as usual: Rappal, $3,234.34; Swift, $18,529.15; Fowler, $1,588.27; you, $5,820.75; Campbell, $1,558.46; you, $9.50; making a total of $30,740.87.

Q. That draft upon Rappal for $3,234 and some odd cents was a ten-day draft given by Mr. F. J. Rappal, was it not?

A. Yes, sir; that is my recollection.

Q. Upon Rappal, Sons & Co.?

A. Yes, sir.

Q. Have you any other letters, dated October 5th, 1885, from the Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank, Chicago, in your letter book?

A. The next date is the 6th; there are no more of the 5th.

Q. Will you please read what you have of the 6th?

* Figures printed in bold-face type in pencil in original.

A. October 6, 1885. Geo. E. Conrad, Esq., cashier, Chicago, Ills. Dear Sir: On payment of draft on Swift & Co., $8,859.93, please deposit $8,000 for our credit with Commercial National Bank, Chicago. We expect that the draft of Mr. Rappal, on Rappal, Sons & Co., for $3,234.34 and $19,505.62 will be paid in any event when due. If Rappal, Sons & Co. are in any trouble financially we will be
579 obliged for any information you can give us. Yours respectfully. P. Connelly, cashier."

Q. Is there not another letter dated October 6, 1885, prior to that enclosing the draft for $19,505.62 on ten days?

A. There is such a letter of October 6, 1885, I find, of the same date, and contains items as follows: "Swift & Co., $8,859.93; Rappal, Sons & Co., $19,505.62, ten days' date; Kennan & H., $1,000.

Q. Have you a copy of any letter from the Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank dated October 6, 1885?

A. I don't find any more of the date October 6th.

Q. Will you give the copy of the next letter which you find from the Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank?

A. The next letter is dated October 7th.

Q. Please read the same.

A. The items are as follows: "Swift Bros., $15,688.86; George Adams & Burke, $2,045.98; J. S. McFarland & Co., $922.22; a total of $16,727.06."

Q. Is there anything further in that letter?

A. No, sir.

Q. What is the copy of the next letter which you have from the Kansas City Stock-Yards Bank to the Union Stock-Yards National Bank?

A. October 8th, enclosing three items.

Q. What are they, please?

A. "On you, $1,800; Swift & Co., $7,136.11; Campbell, Lancaster & Co., $500; total, $9,436.11." In the same letter is enclosed draft for $4.62, protest fees on Rappal draft.

Q. When did that letter go?

A. On the 8th of October.

580 Q. Was there anything further in the letter than the printed form, as before described, and what you have read?

A. Nothing more.

Q. The $4.62 protest fees mentioned in that letter was the amount of the protest fees requested of you by the letter of the Union Stock-Yards National Bank of October 6, 1885?

A. I take it to refer to the same letter.

Q. What is the next letter the copy of which you have from the Union Stock-Yards National Bank?

A. October 9th is the next one.

Q. Please read it.

A. It is an enclosure letter of two items—George Adams & Burke, $4,882.06; Swift & Co., $15,927.73.

Q. It contains nothing but that?

A. Nothing.

Q. Mr. Connelly, have you any letters from the Union Stock-Yards National Bank to the Kansas City Stock-Yards Bank of subsequent date to October 6, 1885, and before October 10, 1885? If you have, will you please produce them?

A. I have one letter here dated 10, 7, 1885; three letters dated 10, 8, 1885, and one dated 10, 9, 1885.

Q. These are all the letters which you have between those dates from the Union Stock-Yards National Bank, Chicago, to your bank, are they?

A. Yes, sir; between the 6th and the 10th.

Counsel for defendants offers these letters in evidence, one dated October 7, 1885, which they ask may be copied at length into the record and marked "Exhibit I" to deposition taken December
581 10, 1886; one dated October 8, 1885, concerning which they make a like request and wish marked "Exhibit J" to deposition taken December 10, 1886, and another letter, dated October 8, 1885, concerning which he makes the same request, and that it be marked "Exhibit K" to deposition taken December 10, 1886, and another letter, dated October 8, 1885, concerning which they make the same request and ask that it be marked "Exhibit L" to the deposition taken December 10, 1886, and another letter, dated October 9, 1885, with the same request, and that it be marked "Exhibit M" to the deposition taken December 10, 1886.)

(The following are copies of Exhibits "I," "J," "K," "L," and "M," respectively.)

EXHIBIT I.

Union Stock-Yards National Bank.

Elmer Washburn, pres't; George E. Conrad, cashier; Charles Jameson, ass't cashier.

CHICAGO, 10, 7, 1885.

P. Connelly, Esq., cash'r, Kansas City.

DEAR SIR: Your favor of the 5th is received, with enclosures as stated. I remit to Am. Exch., N. Y., for your credit for items as specified below.

Yours truly, GEO. CONRAD, *Cash'r.*

Us	$9 50
"	5,820 75
Campbell & Co.	1,558 46
*Fowler	1,588 77
Swift	18,529 15
*Rappal	3,234 34
	*30,740 97
	$25,917 86
582 Fowler	1,588 77
	$27,506 63

*Erased in original.

EXHIBIT J.

Union Stock-Yards National Bank.

Elmer Washburn, pres't; George E. Conrad, cashier; Charles Jameson, ass't cashier.

CHICAGO, 10, 8, 1885.

P. Connelly, ass't cashier, K. C.

DEAR SIR: I enclose and return bills as stated below.

Yours truly, GEO. CONRAD, *Cash'r.*

Rappal	$3,234 34
Protest fees	2 31
	3,236 65

Please remit fees.

EXHIBIT K.

Union Stock-Yards National Bank.

Elmer Washburn, pres't; George E. Conrad, cashier; Charles Jameson, cashier.

CHICAGO, 10, 3, 1885.

P. Connelly, Esq., A. cashier, Kans. City.

DEAR SIR: Your favor of the 6th is received, with enclosures as stated. I remit to Am. Exch. $1,859.93, Com'l, Chi., $8,000, for your credit for items as specified below.

Yours truly, GEO. CONRAD, *Cash'r.*

Kennan & H.	$1,000 00
Swift & Co.	8,859 93
	$9,859 93

583 For acceptance, Rappal, $19,505.00.

EXHIBIT L.

Union Stock-Yards National Bank.

Elmer Washburn, pres't; George E. Conrad, cashier; Charles Jameson, cashier.

CHICAGO, *October* 8, 1885.

P. Connelly, Esq., A. cash'r, Kansas City, Missouri.

DEAR SIR: Your favor of the 6th inst. received. F. J. Rappal has not been at the bank since his return and the firm have no money with us. I don't expect the two draftt you mention will be paid at maturity; at least they refuse to accept them. I cannot tell you what condition they are in or what they propose to do, but I judge they are not in condition to pay anything at present.

Yours truly, [redacted] GEORGE CONRAD.

EXHIBIT M.

Union Stock-Yards National Bank.

Elmer Washburn, pres't; George E. Conrad, cashier; Charles Jameson, ass't cashier.

CHICAGO, 10, 9, 1885.

Peter Connelly, Esq., cashier, Kansas City.

DEAR SIR: I enclose and returns bills as stated below.

Yours truly, GEORGE CONRAD, *Cash'r.*

Rappal	$19,505 00
Protest fees	2 31
	$19,505 31

584 Please remit fees.

The taking of the deposition was adjourned till 2.30 p. m. December 11, 1886.

DEC. 11, 1886.

Cross-examination by Mr. DEAN:

Q. Mr. Connelly, when did you receive Exhibit A to your deposition taken December 10, 1886?

A. I have no way of telling that from my memory. I don't know.

Q. When, in the usual course of business, would you receive it?

A. Well, I should have received that on the following day, or, at the farthest, the second day. I understand, at least, if the mail leaves Chicago on the 10 o'clock train at night it gets here at 11 or 12 o'clock the next morning, and the letter should have arrived here the following day. There is a mail leaves Chicago at 12 o'clock noon and at about 12 at night.

Q. This letter, marked Exhibit A, shows that your account is not entitled to a credit of the Rappal draft for $6,231.10.

A. It shows that it had been inserted among the items they had remitted to New York and afterwards erased and deducted.

Q. Did you receive any telegram on that day of the non-payment of that draft?

A. All the telegrams I received are among the exhibits, and if there was any it would be there.

Q. Is this telegram, marked Exhibit B, and which reads as follows—"Rappal sixty-two hundred not paid; have nothing to remit. Commercial National Bank, George E. Conrad, cashier"—the
585 first intimation that you had of the non-payment of that draft?

A. That is the fact in the case.

Q. At what time was this telegram received at Kansas City, if you know?

A. Well, I couldn't pretend to know at this time. The marks on the telegram would be an indication as to the time.

Q. What marks are on the telegram as to the time when it was received at the Kansas City office?

A. Here I see "2.30 p.," which I would consider to mean 2.30 p. m.

Q. Then the draft for $6,231.10 appears to have been protested on the day previous to the sending of that telegram?

A. That seems to be the case. The letter is dated "10, 2," and the telegram is dated "9, 3," evidently meant for "10, 3."

Q. At what time do you usually mail your letters?

A. We mail them the same day they are written.

Q. State, if you know, when the draft for $19,505.62 was returned to your bank and taken up by A. J. Gillespie.

(Mr. BROWN: Question objected to on the ground that it does not fully appear that the draft was taken up when received.)

A. All I know about it is what the books show. I have no correct recollection on the subject. As to the time I must refer to the books. I see from our cash-book, under date of October 6, the following entry on the debit side, Union Stock-Yards National
586 Bank in parenthesis: "Gil. ch'k," and the amount, $19,505.62. That was the draft we sent and the Union Stock-Yards National Bank returned unpaid, for which we received a check from A. J. Gillespie & Co., and the abbreviated words "Gil. ch'k" mean Gillespie's check.

Q. State, if you know, whether that was the check for the draft drawn on Rappal for $19,505.62?

A. That is what it was.

Q. Have you ever required A. J. Gillespie & Co. to take up a draft before it was received by your bank?

A. I don't recollect of any such a transaction; and the custom is to get the check when I have the draft under protest in hand.

Q. Do you know of or recall a single instance where a draft was ever taken up before its return to your bank?

A. I don't recall an instance.

Q. From your cash book, on page 66, it would appear that several items were written down on that page and as of date Tuesday, October 6, 1885; now, will you tell us, so far as you can specify from the book itself, whether this entry was made in the early part of that day or the latter part?

A. That entry would naturally be made towards the close of business that day; I couldn't say positively the hour.

Q. Were there a large number of entries after that?

A. I don't know what you would call a large number. There are about six or eight.

Q. How many previous?

A. About the same number.

587 Q. If that draft was received by your bank in the morning of October 6th, what would then be done with it by you in the usual course of business?

A. As soon as I received it I would take it to Gillespie's office and get his check for it.

Q. Have you any recollection of doing otherwise with reference to this draft?

A. I have not.

Q. At what time is the morning mail from Chicago delivered to your bank?

A. We have at present two deliveries; at that time we had but one delivery, and that was, I think, somewhere between 8.30 and 9.30—sometimes later; sometimes as late as 10 o'clock, from delay on the trains; but it was during the morning hours.

Q. If this draft had been mailed at Chicago on the day previous, at 12 o'clock, would you get it in the forenoon of October 6th?

A. That is when it would be due here.

Q. And as soon as delivered you would present it to Gillespie to be taken up?

Q. Yes, sir.

Redirect examination by Mr. BROWN:

Q. Mr. Connelly, there is a letter which you produced in evidence yesterday, dated Chicago, 10, 6, 1885, and which says: "I enclose and return bills as stated below," and enclosing draft for $19,505.62, and protest fees, and one for $691.70; if you had received that letter and it had not contained any of these en-
588 closures, would you not have referred to that fact in writing to the Union Stock-Yards National Bank?

A. I certainly would.

Q. We have in evidence a copy of a letter produced by you, dated October 8, 1885, and addressed to the Union Stock-Yards National Bank, Chicago, in which you remit three items for collection, and also remit $4.62 for protest fees. That letter contains nothing about the non-enclosure of this draft in their letter of October 6th. It has been testified in this case by the officers of the Union Stock-Yards National Bank that the letter which you hold in your hand naming these enclosures was sent by their bank upon the evening of October 6th, 1885. I ask you, in the light of these matters, whether you do not now think that it is possible that if the nineteen thousand odd draft were taken up by Mr. Gillespie upon October 6th it was taken up without the draft being here, and because you had received telegraphic advice that it was not paid and was not likely to be paid?

(Mr. DEAN: Question objected to as wholly irrelevant, and, so far as the purposes of this question are concerned, it ought not to be included in the interrogatory.)

A. As to the possibilities, I would not be prepared to say that it was not possible, but it was extremely improbable, because I don't recollect of such a thing having been done since I have been in the office. I don't know of anything more to say about it, only I
589 would say there is such a possibility as a man dating a letter the 6th when it was the 5th.

Q. You have produced, Mr. Connelly, a letter dated the 5th of October from the Union Stock-Yards National Bank to your bank,

marked Exhibit F, which contains this item of $19,505.62, and then it is crossed out and subtracted from the total, which appears without this item. If that draft had been contained in that letter, contrary to its face, you would have called the attention of the Union Stock-Yards National Bank to it, would you not?

A. If the draft had been contained in this letter I don't know as I would have called the attention of the bank to it until I got that amount, if that came at a subsequent time.

Q. Would you not in any event, since the total of these items would not include $19,505.62?

A. I see it is erased.

Q. Erased and subtracted from the total?

A. Yes, sir.

Q. And if, therefore, it had been contained the total would have been wrong?

A. The total does not contain the $19,505.62.

Q. If the enclosure letter had contained the draft itself the sum total would have been wrong, wouldn't it?

A. Not if it was marked out. If that were not erased, then it would be wrong.

Q. If that Rappal Sons draft had been in with this letter, then the total would not represent the actual amount which you received as enclosures?

590 A. I believe it would, if I understand you. There are a number of items which make $87,721.35; one of the items is $19,505.62; the draft which represents that item is also with the letter under protest, and the amount is deducted from the first total, leaving the correct total, according to the letter.

Q. The amount of cash would — the correct total?

A. If the item erased is subtracted from the first total.

Q. If you had received the draft before you received this letter dated October 5, and then had received this subsequent letter, would you not have called the attention of the Union Stock-Yards National Bank to that fact?

A. If I had received the letter of the 10th and 5th, including the Rappal item not erased—do you mean if I had received the draft before the letter would I have called the attention of the bank to the fact in answer to this letter of the 10th and 5th?

Q. Yes.

A. I might and I might not. They are simply items of credit. I never answered this letter.

Q. Will you please, Mr. Connelly, look in your cash book, to which you have referred, and tell me when these items mentioned in the letter of October 5th were charged to the Union Stock-Yards National Bank? Will you please tell when the credits were made?

A. Commercial National, $17,005, October 7, 1885; the same day credits the Union Stock-Yards National Bank by remittance to New York for the items contained in this letter,

591 $50,715.73.

Q. Now, Mr. Connelly, I understand you to say that these items which were mentioned in the letter of the Union Stock-

Yards National Bank of October 5th, 1885, which should be credited to that bank, were credited under date of October 7, 1885?

A. That is right.

Q. I will ask you, Mr. Connelly, whether you have not in your cash book an entry of $4.62 sent to the Union Stock-Yards National Bank in your letter of October 8, 1885?

A. I doubt whether it would appear on this book, because we never debited it; we charged it in with Gillespie's check when he paid.

Q. Would it appear as an item in any book?

A. It would as a charge to Gillespie.

Q. Will you please look for that charge?

A. I have no time to do it now.

Q. Mr. Connelly, you have suggested that a man may date his letter wrongly, as, for instance, upon the 6th, when it should be upon the 5th. There is a letter, a copy of which you have produced in evidence, dated October 8, 1885, in which you remit to the Union Stock-Yards National Bank $4.62 for protest fees. You didn't date that letter incorrectly, did you?

A. I didn't mean to, if I did.

Q. You don't suppose so?

A. I don't suppose I did.

592 Q. We have put in evidence all the letters from the Union Stock-Yards National Bank to you between the 1st of October and the 10 of October, 1885. The only demands for protest fees was a demand in the letter dated October 3, 1885, to which you responded (as the copy produced by you shows) by remitting $2.31 upon October 5, 1885, and a demand for $4.62 protest fees in the letter dated October 6, 1885, to which you seem to have responded by a remittance of $4.62 for protest fees by your letter dated October 8, 1885. Do you not think that this shows that the letter which is dated October 6, 1885, from the Union Stock-Yards National Bank to your bank was received by you upon October 8, 1885?

A. Well, it would look that way. The letter dated October 6, 1885, is responded to by me October 8th.

Q. With a remittance of $4.62?

A. I think it looks fair.

Q. And you have already said that if the letter, when you received it, had not contained the enclosure which it purported to contain you would have called the attention of the Union Stock-Yards Bank to that fact?

A. I should.

Q. This cash item which appears in the cash book under date of October 6, 1885, is for $19.505.62, which seems to have been the amount for which Mr. Gillespie gave his check upon that day. If you had had the draft with you when you received that check and the draft had contained protest fees attached by the bank, and the

593 bank had advised you of such protest fees, would you not have included the protest fees in the amount demanded of Gillespie?

A. I would.

Q. $19,505.62 is the face of the draft without protest fees. Does it not seem as though the check was given before the draft with the papers was returned?

A. Not necessarily so. This entry would not necessarily lead to your conclusion.

Q. Is there an entry on October 6th, 1885, showing the receipt of the amount of $4.62 protest fees from Mr. Gillespie?

A. I have to refer to the entry book again to see what it does show. I don't see anything there.

Q. You got Mr. Gillespie's check for $19,505.62?

A. I did.

Q. Then I understand in Mr. Gillespie's account, under date of October 6th, there seems to be a check debited to him for $19,505.62, but there seems to be no check for $4.62?

A. No.

Q. If there was no check for $4.62 and no payment made of protest fees, but only the payment of the principal on face of check, would not that seem as though payment was received without the draft and protest fees included being here?

A. It would certainly appear that payment was made without the protest fees.

Q. As a matter of fact, were you not somewhat surprised
594 and alarmed at the telegraphic advice which you received concerning the non-payment of the nineteen thousand and odd draft and the six hundred and odd draft by Rappal upon Oct. 5th, 1885?

A. Yes, sir.

Q. The bank felt anxious concerning the money which should have been placed to Gillespie's credit?

A. Yes, sir.

Q. I will ask you to turn to the copy of your letter of October 8 again. That letter, Mr. Connelly, which you have now turned to is copied in its proper place in the letter-press copy book as of October 8th, 1885?

A. Yes, sir.

Q. The $4.62 protest fees which are mentioned therein are mentioned as the protest fees of the Rappal draft, are they not?

A. Yes, sir.

Q. Will you please to look for the items which are mentioned as remitted or enclosed to the Union Stock-Yards National Bank and tell me under what date in your book those appear to be charged to the Union Stock-Yards National Bank?

A. Under date October 8, 1885.

Q. Showing that the letter of which the copy is before you was dated correctly?

A. Yes, sir; there is no doubt about that.

Recross-examination by Mr. DEAN:

Q. If the letter from the Union Stock-Yards Nation. Bank bearing date 10, 5, 1885, was sent on the forenoon of the 5th of October at what time would it reach this bank?

595 A. My calculation is that it would reach here the next morning at 7.

Q. If it was sent out at noon of the 5th what time would it get here?

A. If it was sent at noon on the 5th it should be here the next morning at 9.

Q. This letter of the 10th and 5th showed that the Rappal draft had not been paid on that day, does it not?

A. Inferentially it does. It was listed and erased, and the natural inference is that it was not paid.

Q. In the usual course of business would the draft have been mailed to you on the same day?

A. I presume it would; that is our custom, but it might be. If I received a draft direct from a correspondent I wouldn't be able to send it out the same day, because it might be too late; but if the case was urgent I might send notice, and the draft would go the very next morning. I don't know what they do in Chicago.

Q. Then the draft would go the next morning?

A. It would go on the first mail.

Q. The next morning?

A. I don't know that it would catch the morning mail; but the very first mail it could catch.

Q. It would be protested that night?

A. Yes, sir.

Q. This letter of the 10th and 5th shows that the Rappal draft was not paid that day?

596 A. Yes, sir.

Q. And it would in the ordinary course of business be protested that day?

A. Yes, sir.

Q. And in the next morning mail the draft would go out?

A. Yes, sir; there would be no occasion to hold it.

PETER CONNELLY.

I, Edward W. Taylor, notary public, do hereby certify that, in pursuance of within commission or notice, came before me, at the city of Kansas, in county and State last aforesaid, Peter Connelly, who was by me sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination reduced to writing and subscribed by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid, and his said deposition is now herewith returned.

Given at Kansas City, in county of Jackson and State of Missouri, this 10th day of December, 1886.

[SEAL.] EDWARD W. TAYLOR,
Notary Public, Jackson Co., Mo.

597 Deposition of witness produced, sworn, and examined at the office of Peter Connelly, in the city of Kansas, in the county of Wyandotte and State of Kansas, before me, the undersigned, P. Connelly, a notary public, in a certain cause now pending in the circuit court, in the city of Chicago, in the county of Cook and State of Illinois, between A. J. Gillespie and Company, plaintiff-, and The Union Stock-Yards National Bank of Chicago, Illinois, defendant, on the part of the plaintiff-.

LOUIS J. GILLESPIE, of lawful age, being sworn and examined on the part of the complainants, deposeth and saith:

Examination of LOUIS J. GILLISPIE by Mr. Dean:

(Mr. Brown, counsel for the Union Stock-Yards National Bank, objects to the testimony of Louis J. Gillespie unless the same is strictly in rebuttal.)

Q. State your name, age, residence, and occupation.

A. Louis J. Gillespie; residence, Kansas City, Missouri; age, 26 years.

Q. Are you a member of the firm of A. J. Gillespie & Company?

A. Yes, sir.

Q. Were you a member of that firm in October, 1885?

A. Yes, sir.

598 Q. Did you see or have anything to do with a certain check drawn by the firm of A. J. Gillespie & Company on the 6th day of October, 1885, to take up a draft for $19,505.62 drawn by your firm on Rappal, Sons & Company?

A. Yes, sir.

Q. State what you had to do with that check.

A. I just signed it.

Q. Who wrote it?

A. My brother, John F. Gillespie.

Q. Why didn't he sign it?

A. He is not a member of the firm.

Q. State whether at that time you saw the draft drawn by your firm on Rappal, Sons & Co. for $19,505.62.

A. Yes, sir; I think I did; I am satisfied I did.

Q. Who presented that draft?

A. Mr. Connelly, the cashier.

Q. Where?

A. In our office.

Q. At what time in the day?

A. At 12 or 1 o'clock. I was just getting ready to go to dinner.

Q. Was the draft then actually present, at the time you gave the check to take it up?

A. Yes, sir.

Q. And the check is dated October 6, 1885?

A. I don't know. I haven't seen the check since. I dated it the day I signed it.

Q. When the check was given the draft was there?

A. Yes, sir.

Q. And surrendered to you?
599 A. My brother had it. I signed the check and went on out.
Q. What became of the draft?
A. I don't know.
Q. It was there at the time you signed the check?
A. Yes, sir; I saw it.
Q. Who had it?
A. Johnnie took it.

(Mr. Brown, counsel for the Union Stock-Yards National Bank, reserving the objection that the testimony of Louis J. Gillespie is not in rebuttal and is not taken under the terms of the stipulation, asks this question:)

Q. Are you sure that it was not a memorandum of the amount of that draft which Mr. Connelly presented for payment rather than the draft itself?
A. No, sir; I think it was the draft; I am satisfied it was.
Q. Then you are as positive that the draft itself was there as you are of the fact that you signed the check?
A. I am not as positive of it as I am that I signed the check. Mr. Connelly was on the other side of the desk when I signed the check, and he and Johnnie came around and I handed the check to Mr. Connelly, and I saw the draft on the other side of the desk.
Q. Are you positive?
A. I am positive that the draft was there.
Q. You are positive that the original draft for $19,505.62 was there when you signed the check?
600 A. Yes, sir.
Q. You are sure?
A. Yes, sir.

Redirect examination by Mr. DEAN:

Q. In whose hands was the draft?
A. Mr. Connelly's.
Q. Do you know of a single instance that your firm ever took up a draft without having the draft first returned?
A. No, sir; and we have taken up a good deal.

LOUIS J. GILLESPIE.

I, P. Connelly, notary public, do hereby certify that, in pursuance of within commission or notice, came before me, at my office, in county and State last aforesaid, Louis J. Gillespie, who was by me sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination reduced to writing and subscribed by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid, and his said deposition is now herewith returned.

Given at Kansas City, in county of Wyandotte and State of Kansas, this — day of December, 1886.

[SEAL.] P. CONNELLY,
Notary Public.

My term will expire July 13, 1887.

Endorsed: Filed May 10, 1887. Wm. H. Bradley, clerk.

601 COMP'TS' EX. A. E. B. Sherman, Master.

F. J. Rappal. L. L. Rappal. F. J. Rappal, Jr.

Rappal, Sons & Company, live stock commission, 79 & 81 Exchange building, Union Stock-Yards.

CHICAGO, *October 2nd*, 1885.

Account Sales of Cattle, 133; *Hogs*, —, *Sold for Account of A. J. Gillespie & Co., Acc. Bowen, K. City.*

Purchasers.	Cattle.	Hogs.	Sheep.	Weight.	Off.	Price.		
---- -------	133	------	-----	161,200	-----	4⅛	6,649 50	6,649 50
Charges:								
Freight and back charges							654 50	
Yardage { Cattle							33 25	
Yardage { Hogs								
Yardage { Sheep								
Hay, 1,000 pounds							15 00	
Corn, bushels								
Inspection								
Commission							66 50	
								769 25
Net proceeds								5,880 25

E. & O. E.

602 COMP'TS' EX. B. E. B. Sherman, Master.

F. J. Rappal. L. L. Rappal. F. J. Rappal, Jr.

Rappal, Sons & Company, live stock commission, 79 & 81 Exchange building, Union Stock-Yards.

CHICAGO, *Oct.* 3*rd*, 1885.

Account Sales of Cattle, 810; *Hogs,* —; *Sheep,* —, *Sold for Account of A. J. Gillespie & Co., Acc. Bowen.*

Purchasers.	Cattle.	Weight.	Off.	Price.		
N. Morris	46	38,550		2 55	983 02	
"	25	21,320		2 55	543 66	
"	282	240,500		2 55	6,052 75	
Armour	345	342,070		3 00	10,262	
"	91	89,130		3 00	2,673 90	
J. O'Brien	12	Downers		10 00	120 00	
"	1	Crip.			35 00	
Union Yard Co.	2	Dead			10 00	
Quincy y'ds	6	" Quincy			11 90	
	810				20,692 33	
		29 bruised		5 00	145 00	
						20,547 33
Charges:						
Freight and back charges					3,330 14	
Yardage Cattle					201 50	
Yardage Hogs						
Yardage Sheep						
Hay, 6,200 pounds					93 00	
Commissions					403 00	
						4,027 64
Inspection						
Net proceeds						16,519 69

Duplicate bill.
E. & O. E.

603 COMP'TS' EX. C. E. B. Sherman, Master.

F. J. Rappal. L. L. Rappal. F. J. Rappal, Jr.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange building, Union Stock-Yards.

CHICAGO, *October 6th*, 1885.

Account Sales of Cattle, 122; *Hogs*, —; *Sheep*, —, *Sold for Account of A. J. Gillespie & Co., Acc. Bowen & Co.*

Purchasers.	Cattle.	Hogs.	Sheep.	Weight.	Off.	Price.		
---- ---- --	20	------	------	21,010	-----	3.75	787 87	
-- --- ----	79	------	------	57,690	-----	2¼	1,225 91	
---- ---- --	22	------	------	17,970	-----	3.05	548 09	
-- ---- ----	1	------	------	710	-----	3.05	21 65	
	122						2,583 52	
				3 bruised	-----	------	15	
								2,568 52
Charges:								
Freight and back charges							604 75	
Yardage { Cattle							30 50	
Yardage { Hogs								
Yardage { Sheep								
Hay, 1,000 pounds							15 00	
Inspection								
Commission							61 00	
								711 25
Net proceeds								1,857 27

E. & O. E.

604 COMPLAINANTS' EXHIBIT D. E. B. Sherman, Master.

$6,231.10. KANSAS CITY, Ks., 9, 30, 188–.

On demand pay to the order of P. Connelly, A. cashier, sixty-two hundred & thirty-one $\frac{10}{100}$ dollars, value received, and charge to account of—

A. J. GILLESPIE & CO.

To Rappal, Sons & Co., Union Yards, Chicago, Ills.

[Written across the face:] Kansas City Stock-Yards Bank. Protested for non-payment Oct. 2, '85. C. J., N. P.

(Endorsed:) Pay Geo. E. Conrad, cash., or order, for collection on acc't of Kansas City Stock-Yards Bank. P. Connelly, ass't cashier.

STATE OF ILLINOIS, } ss:
County of Cook, }

Be it known that on this 2nd day of October, in the year of our Lord one thousand eight hundred and eighty-five, I, Charles Jameson, a notary public, duly commissioned and sworn, for the county of Cook, in said county and State, and residing in said county and State, at the request of the Union Stock-Yards National Bank, went with the original draft, which is above attached, to the office of Rappal, Sons & Co. (F. J. R., Jr.), and demanded payment thereon, which was refused: "Send it back." Whereupon I, *said* the said notary public, at the request aforesaid, did protest, and by these presents do solemnly protest, as well against the maker of said draft, the endorsers thereof, as all others whom it may or doth concern, for
605 exchange and all costs, charges, damages, and interest already incurred, re-exchange, by reason of the non-payment of the said draft.

And I, the said notary, do hereby certify that within forty-eight hours from the day and year above written due notice of the foregoing protest was put in the post office at Chicago as follows:

Notice for A. J. Gillespie & Co., Kansas City, Mo.;
" P. Connelly, A. cashier, do. "
" Rappal, Sons & Co., U. S. Yards, Chicago, Ills.,

Each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL.] C. JAMESON,
Notary Public.

Fees: Noting, 25 cents; protest and record, 75 cents; 3 notices, 75; seal, 25 cts.; certificate, 25 cents; postage, .06—$2.31. Vol. 1, page 532.

606 COMPLAINANTS' EXHIBIT E. E. B. Sherman, Master.

$19,505.62. KANSAS CITY, KS., *Oct.* 1, 1885.

On demand pay to the order of P. Connelly, ass't cashier, nineteen thousand five hundred five $\frac{62}{100}$ dollars, value received, and charge to account of—

A. J. GILLESPIE & CO.

To Rappal, Sons & Co., Union Stock-Yards, Chicago, Ills.

[Written across the face:] Kansas City Stock-Yards Bank. Protested for non-payment Oct. 5, 1885. C. J., N. P.

(Endorsed:) Pay Geo. E. Conrad or order for collection acc't of Kansas City Stock-Yards Bank. P. Connelly, ass't cashier.

STATE OF ILLINOIS, } ss:
County of Cook, }

Be it known that on this 5th day of October, in the year of our Lord one thousand eight hundred and eighty-five, I, Charles Jameson, a notary public, duly commissioned and sworn, for the county of Cook, in said county and State, and residing in said county and State, at the request of the Union Stock-Yards National Bank, went with the original draft, which is above attached, to the office of Rappal, Sons & Co. and demanded payment thereon, which was refused: "Won't pay." Whereupon I, *said* the said notary public, at the request aforesaid, did protest, and by these presents do solemnly protest, as well against the maker of said draft, the endorsers thereof, as all others whom it may or doth concern, for exchange and all costs, charges, damages, and interest already incurred, re-exchange, by reason of the non-payment of the said draft.

607 And I, the said notary public, do hereby certify that within forty-eight hours from the day and year above written due notice of the foregoing protest was put in the post office at Chicago as follows:

Notice for A. J. Gillespie & Co., Kansas City, Mo.;
" P. Connelly, A. cashier, " "
" Rappal, Sons & Co., U. S. Yards, Chicago, Ills.,

Each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL.] CHARLES JAMESON,
Notary Public.

Fees: Noting, 25 cents; postage and record, 75 cents; 3 notices, 75; seal, 25 cts.; certificate, 25 cents; postage, .06—$2.31. Vol. 1, page 539.

608 COMPLAINANTS' EXHIBIT F. E. B. Sherman, Master.

$691.70. KANSAS CITY, KS., *Oct.* 3, 1885.

At sight pay to the order of P. Connelly, as cashier, six hundred and ninety-one $\frac{70}{100}$ dollars, value received, and charge to account of—

A. J. GILLESPIE & CO.

To Rappal, Sons & Co., Chicago, Ills.

[Written across the face:] Kansas City Stock-Yards Bank. Protested for non-payment Oct. 5, '85. C. J., N. P.

(Endorsed:) Pay Geo. E. Conrad, cash., or order, for collection on acc't of Kansas City Stock-Yards Bank. P. Connelly, ass't cashier.

STATE OF ILLINOIS, } ss:
County of Cook, }

Be it known that on this 5th day of October, in the year of our Lord one thousand eight hundred and eighty-five, I, Charles Jameson, a notary public, duly commissioned and sworn, for the county of Cook, in said county and State, and residing in said county and State, at the request of the Union Stock-Yards National Bank, went with the original draft, which is above attached, to the office of Rappal, Sons & Co. and demanded payment thereon, which was refused:
" Won't pay." Whereupon I, *said* the said notary public, at the
609 request aforesaid, did protest, and by these presents do solemnly protest, as well against the maker of said draft, the endorsers thereof, as all others whom it may or doth concern, for exchange and all costs, charges, damages, and interest already incurred, re-exchange, by reason of the non-payment of the said draft.

And I, the said notary public, do hereby certify that within forty-eight hours from the day and year above written due notice of the foregoing protest was put in the — office at Chicago as follows:

Notice for A. J. Gillespie & Co., Kansas City, Mo.;
" P. Connelly, A. cashier, " "
" Rappal, Sons & Co., U. S. Yards, Chicago, Ills.;

Each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL.] C. JAMESON,
Notary Public.

Fees: Noting, 25 cents; protest and record, 75 cents; 3 notices, 75; seal, 25 cts.; certificate, 25 cents; postage, .06—$2.31. Vol. 1, page 538.

610 COMPLAINANTS' Ex. 1. E. B. S., Master.

No. 3467.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October* 1*st*, 1885.

Union Stock-Yard National Bank

Pay to the order of Union Stock-Yards Company eight thousand one hundred and seventy-seven $\frac{92}{100}$ dollars.

$8,177.92. RAPPAL, SONS & CO.

Endorsed: Geo. F. Williams, treasurer.

8,177	92
9	50
3,713	78
11,901	20

COMPLAINANTS' EX. 2. E. B. S., Master.

No. 3469.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October* 1*st*, 1885.

Union Stock-Yard National Bank

Pay to the order of Transit House seventeen $\frac{20}{100}$ dollars.
$17.20. RAPPAL, SONS & CO.

Endorsed: L. E. Howard, m'g'r, per Hunter.

17	20
1,145	72
100	00
4,848	60
60	
20	
50	
6,241	52

COMPLAINANTS' EX. 3. E. B. S., Master.

*F. J. R., Jr.

No. 3468.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *Oct.* 1*st*, 1885.

Union Stock-Yard National Bank

Pay to the order of John F. Reid sixty $\frac{00}{100}$ dollars.
$60.00. RAPPAL, SONS & CO.

[Drovers' National Bank. Paid Oct. 2, 1885, per H. W. H.]

Endorsed: John F. Reid. Pay Drovers' Nat'l Bank or order for Commercial National Bank of Chicago.

611 COMPLAINANTS' EX. 4. E. B. S., Master.

No. 3471.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October* 1*st*, 1885.

Union Stock-Yard National Bank

Pay to the order of J. M. Lauig ninety-three $\frac{73}{100}$ dollars.
$93.73. RAPPAL, SONS & CO.

* Words printed in bold-face type in pencil in original.

[Written across the face:] Protested for non-payment Oct. 6, 1885. C. J., N. P.

Endorsed: J. M. Lauig. Pay order of Marshel, Field & Co. H. Martin & Son.

COMPLAINANTS' EX. 5. E. B. S., Master.

No. 3470.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October* 1*st*, 1885.

Union Stock-Yard National Bank

Pay to the order of Geo. E. Conrad, cashier, three thousand seven hundred and thirteen $\frac{78}{100}$ dollars.

$3,713.78. RAPPAL, SONS & CO.

Endorsed.

***A. J. G. & Co., ac. Bowen & Co.**
151 18 cr.
2
37 13
190 31 cr.

COMPLAINANTS' EX. 6. E. B. S., Master.

No. 3472.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October* 2*nd*, 1885.

Union Stock-Yard National Bank

612 Pay to the order of Chicago Exchange four thousand eight hundred and forty-eight $\frac{60}{100}$ dollars.

$4,848.60. RAPPAL, SONS & CO.

Endorsed: J. D. Small.

* Words and figures printed in bold-face type in pencil in original.

COMPLAINANTS' EX. 7. E. B. S., Master.

No. 3473.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October 2nd*, 1885.

Union Stock-Yard National Bank

Pay to the order of currency twenty dollars.
$20.00. RAPPAL, SONS & CO.

[Union Stock-Yards Nation. Bank, Chicago, Oct. 2, 1885.]

Endorsed: Jesse James, shipper for Bowen & Co.

COMPLAINANTS' EX. 8. E. B. S., Master.

No. 3474.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *Oct.* 2, 1885.

Union Stock-Yard National Bank

Pay to the order of Fuller, Son & Co. eleven hundred and forty-five $\frac{72}{100}$ dollars.
$1,145.72. RAPPAL, SONS & CO.

Endorsed: Fuller, Son & Co.

COMPLAINANTS' EX. 9. E. B. S., Master.

No. 3475.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *Oct.* 2, 1885.

Union Stock-Yard National Bank

Pay to the order of c'y fifty dollars.
$50.00. RAPPAL, SONS & CO.

[Union Stock-Yards National Bank, Chicago, Oct. 2, 1885.]

Endorsed.

***Bowen & Co. & J.:**

Cigars	**5 00**
Expense ac., horses	**2 50**
G. L. R.	**10 00**
F. J. R., Jr.	**10 00**
Ex. ac., shoeing	**1 50**
F. J. R., Jr.	**21 00**

House.

*Words and figures printed in bold-face type in pencil in original.

613 COMPLAINANTS' EX. 10. E. B. S., Master.

No. 3476.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *Oct.* 2, 1885.

Union Stock-Yard National Bank

Pay to the order of Keenan & Hancock five hundred fifty-seven $\frac{62}{100}$ dollars.
$557.62. RAPPAL, SONS & CO.

Endorsed: Keenan & Hancock, P.

COMPLAINANTS' EX. 11. E. B. S., Master.

No. 3477.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October 2nd*, 1885.

Union Stock-Yard National Bank

Pay to the order of Geo. E. Conrad one hundred $\frac{00}{100}$ dollars.
$100.00. RAPPAL, SONS & CO.

Endorsed: John F. Reid. Check ret'd.

Ex. 12. E. B. S., Master.

No. 3478.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October 3d*, 1885.

Union Stock-Yard National Bank

Pay to the order of currency forty dollars.
$40.00. RAPPAL, SONS & CO.

[Union Stock-Yards National Bank, Chicago, Oct. 8, 1885.]

Endorsed: Wm. James, W. Bowen, shippers for Bowen & Co., st'k y'ds, K. C., Mo.

614 Ex. 13. E. B. S., Master.

No. 3479.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October* 3, 1885.

Union Stock-Yard National Bank

Pay to the order of H. L. Goodall & Co. six $\frac{24}{100}$ dollars.
$6.24. RAPPAL, SONS & CO.

Endorsed: H. L. Goodall & Co.

6	24
557	62
343	07
727	80
2,019	77
40	
5	41
3,699	91

Ex. 14. E. B. S., Master.

No. 3480.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October* 3*d*, 1885.

Union Stock-Yard National Bank

Pay to the order of Hess & Ffaelzer fifteen $\frac{66}{100}$ dollars.
$15.66. RAPPAL, SONS & CO.

[Drovers' National Bank. Paid Oct. 6, 1885, per H. C. G.]

Endorsed: H. C. H. & MacG. & Co.

15	66
29	18
922	25
1,933	27
200	
88	50
650	25
6,385	62
10,224	73

615 Ex. 15. E. B. S., Master.

No. 3481.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October* 3*d*, 1885.

Union Stock-Yard National Bank

Pay to the order of Frank H. Denison three $\frac{15}{100}$ dollars.
$3.15. RAPPAL, SONS & CO.

[Union Stock-Yard Nat. Bank. Paid Oct. 8, 1885.]

Endorsed: Frank H. Denison. Pay yourselves or order for collection account of Merchant National Bank of Chicago. John C. Neely, cashier. Anson.

Ex. 16. E. B. S., Master.

No. 3482.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October* 3*d*, 1885.

Union Stock-Yard National Bank

Pay to the order of Gould & Co. five $\frac{41}{100}$ dollars.
$5.41. RAPPAL, SONS & CO.

[Union Stock-Yard National Bank, Chicago, Oct. 8, 1885.]

Endorsed: Gould & Co. D. L. Dow.

Ex. 17. E. B. S., Master.

No. 3483.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, 3*d October*, 1885.

Union Stock-Yard National Bank

616 Pay to the order of Postal Telegraph & Cable Company twenty-nine $\frac{18}{100}$ dollars.
$29.18. RAPPAL, SONS & CO.

[Union Stock-Yard National Bank, Chicago, Oct. 6, 1885.]

Endorsed: Postal Telegraph & Cable Co., by R. S. Gough, m'g'r.

Ex. 18. E. B. S., Master.

No. 3485.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October* 3*d*, 1885.

Union Stock-Yard National Bank

Pay to the order of Bunker & Cochran three hundred and forty-three $\frac{7}{100}$ dollars.

$343.07. RAPPAL, SONS & CO.

Endorsed: For deposit account of Bunker & Co.

Ex. 19. E. B. S., Master.

No. 3486.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *October* 3*d*, 1885.

Union Stock-Yard National Bank

Pay to the order of remittance two thousand and nineteen $\frac{77}{100}$ dollars.

$2,019.77. RAPPAL, SONS & CO.

Endorsed.

*J. C. Adler	450 96
P. Plaelan	678 01
M. Milton	107 10
J. Quigley	305 62
M. Quigley	280 01
Metcalf, Moore & Co.	113 26
W. J. Stewart	84 81
	2,019 77

617 Ex. 20. E. B. S., Master.

No. 3487.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *Oct.* 3, 1885.

Union Stock-Yard National Bank

Pay to the order of Ex. seven hundred twenty-seven $\frac{80}{100}$ dollars.

$727.80. RAPPAL, SONS & CO.

Endorsed: White & Sons, Salt Lake City.

*Words and figures printed in bold-face type in pencil in original.

Ex. 21. E. B. S., Master.

No. 3488.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *Oct.* 3, 1885.

Union Stock-Yard National Bank

Pay to the order of U. S. Y'ds & Transit Co. fifty-three hundred sixty-one $\frac{34}{100}$ dollars.

$5,361.34. RAPPAL, SONS & CO.

[Written across the face:] Returned not honored — bank Oct. 3, '85.

Ex. 22. E. B. S., Master.

No. 3490.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *Oct.* 3, 1885.

Union Stock-Yard National Bank

Pay to the order of Nelson Morris twenty-five $\frac{00}{100}$ dollars.

$25.00. RAPPAL, SONS & CO.

Endorsed: Pay cashier's check to order of Nelson Morris, five bruised steers.

25	
1,060	
4,343	32
101	90
50	
1,952	70
7,532	92

618 Ex. 23. E. B. S., Master.

No. 3492.

Rappal, Sons & Co., live stock commission, 79 & 81 Exchange b'ld'g, Union Stock-Yards.

CHICAGO, *Oct. 5th*, 1885.

Union Stock-Yard National Bank

Pay to the order of c'y fifty $\frac{00}{100}$ dollars.

$50.00. RAPPAL, SONS & CO.

[Union Stock-Yard National Bank, Chicago, Oct. 5, 1885.]

Endorsed: White and Sons.

Ex. 24. E. B. S., Master.

No. 3493.

CHICAGO, *Oct.* 5, 1885.

Union Stock-Yard National Bank

Pay to Chic. Ex. or order forty-three hundred forty-three $\frac{32}{100}$ dollars.

$4,343.32. RAPPAL SONS & CO.

[2, two cents. United States internal revenue. Stamp redeemed. Two cents, 2.]

Endorsed.

* **White & Sons, Salt Lake City, Utah Ty.**

Ex. 25. E. B. S., Master.

No. 3494.

CHICAGO, *Oct.* 5, 1885.

Union Stock-Yard National Bank

Pay to Union Stock-Y'ds or order one thousand nine hundred & fifty-two $\frac{70}{100}$ dollars.

$1,952.70. RAPPAL, SONS & CO.

[2, two cents. United States internal revenue. Stamp redeemed. Two cents, 2.]

Endorsed: Geo. T. Williams, treasurer.

Ex. 26. E. B. S., Master.

No. 3495.

CHICAGO, *Oct.* 5, 1885.

Union Stock-Yard National Bank

Pay to c'y or order one hundred one $\frac{90}{100}$ dollars.

$101.90. RAPPAL, SONS & CO.

[2, two cents. United States internal revenue. Stamp redeemed. Two cents, 2.]

[Union Stock-Yards National Bank, Chicago, Oct. 6, 1885.]

* **Endorsed: F. J. Rappal & Sons, for house.**

619 Ex. 27. E. B. S., Master.

No. 3499.

CHICAGO, *Oct.* 6, 1885.

Union Stock-Yard National Bank

Pay to U. S. Y'ds & Transit Co. or order six hundred fifty $\frac{25}{100}$ dollars.

$650.25. RAPPAL, SONS & CO.

[2, two cents. United States internal revenue. Stamp redeemed. Two cents, 2.]

[Union Stock-Yard National Bank, Chicago, Oct. 6, 1885.]

Endorsed: Geo. T. Williams, sec'y. D.

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* Words printed in bold-face type in pencil in original.

Ex. 28. E. B. S., Master.

No. 3499.

CHICAGO, *Oct.* 6, 1885.

Union Stock-Yard National Bank

Pay to G. E. Conrad, cashier, or order nineteen hundred thirty-three $\frac{27}{100}$ dollars.

$1,933.27. RAPPAL, SONS & CO.

[2, two cents. United States internal revenue. Stamp redeemed. Two cents, 2.]

Endorsed.

***Cr. on Rappal, S. & Co. note. Oc. 6, '85. G. E. C.**

Ex. 29. E. B. S., Master.

No. —.

CHICAGO, *5th Oct.*, 1885.

Union Stock-Yard National Bank

Pay to yourselves or order ten hundred sixty dollars.

$1,060.00. RAPPAL, SONS & CO.

Endorsed.

Endorsed on note: Rappal, Sons & Co. Oct. 5th, 1885. G. E. Conrad.

620 Ex. 30. E. B. S., Master.

No. 3500.

CHICAGO, *Oct.* 9, 1885.

Union Stock-Yard National Bank

Pay to G. E. Conrad, cashier, or order forty hundred & six $\frac{73}{100}$ dollars.

$4,006.73. RAPPAL, SONS & CO.

[2, two cents. United States internal revenue. Stamp redeemed. Two cents, 2.]

Endorsed.

***Check to pay old note.**

* Words and figures printed in bold-face type in pencil in original.

Ex. 31. E. B. S. Master.

No. 1.

CHICAGO, *Oct.* 6, 1885.

Union Stock-Yard National Bank

Pay to exchange or order sixty-three hundred eighty-five $\frac{62}{100}$ dollars.

$6,385.62. RAPPAL, SONS & CO.

Endorsed.

*** 177 head cattle. Swift & Co.**

Ex. 32. E. B. S. Master.

No. 2.

CHICAGO, *Oct.* 6, 1885.

Union Stock-Yard National Bank

Pay to U. S. Y'ds & T. Co. or order nine hundred twenty-two $\frac{25}{100}$ dollars.

$922.25. RAPPAL, SONS & CO.

Endorsed: Geo. T. Williams, treasurer.

Ex. 33. E. B. S., Master.

No. 3.

CHICAGO, *Oct.* 6, 1885.

Union Stock-Yard National Bank

Pay to c'y or order eighty-eight $\frac{50}{100}$ dollars.

$88.50. RAPPAL, SONS & CO.

[Union Stock-Yards National Bank, Chicago, Oct. 6, 1885.]

Endorsed.

*** Commission.**

621 Ex. 34. E. B. S., Master.

No. 4.

CHICAGO, *Oct.* 6, 1885.

Union Stock-Yard National Bank

Pay to W. Addonis or order two hundred $\frac{00}{100}$ dollars.

$200.00. RAPPAL, SONS & CO.

[Union Stock-Yard National Bank, Chicago, Oct. 6, 1885.]

Endorsed: W. Addonis. Rappal, Sons & Co.

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* Words and figures printed in bold-face type in pencil in original.

622 Ex. R. E. B. S., Master.

Union Stock-Yards National Bank in acc't with Rappal, Sons & Co.

Dr.

1885.		
Aug. 1.	To dep.	9,091 90
3.	"	7,707 29
7.	"	1,740 18
6.	"	10,605 88
7.	"	8,198 41
10.	"	21,311 28
11.	"	1,022 70
12.	"	24,023 93
13.	"	1,125 61
14.	"	33,191 80
15.	"	13,389 52
17.	"	6,960 34
18.	"	2,002 91
19.	"	10,473 48
20.	"	1,784 85
"	"	4,675 80
21.	"	14,138 38
*22.	void	233
22.	"	23,228 10
24.	"	11,203 57
"	"	2,916 24
25.	"	19,303 17
26.	"	24,139 34
"	"	7,695 49
27.	"	13,378 32
27.	"	7,153 68
28.	"	1,793 20
28.	"	4,948 03
"	"	606 76
29.	"	603 60
31.	"	23,321 80
31.	Bal. o. d.	13,548 33
		325,283 89

623 Cr.

1885.		
July 31.	Bal. o. d. from O. book	11,655 58
	"	12,638 89
	"	9,943 92
	"	4,454 21
	"	4,016 33
	"	1,603 43
	"	13,139 65

* Erased in original.

		17,258 22
		24,347 16
		1,059 07
		19,237 26
		12,511 61
		14,141 63
		4,904 84
		784 66
V. R.		15,119 58
		6,603 75
		1,830 25
		11,053 94
		8,204 17
		11,276 91
		26,049 03
		18,067 18
		8,934 86
		30,416 32
		36,031 44
		325,283 89

624 DR.

1885.		
Sep. 1.	To dep.	19,409 20
2.		8,638 01
"		445 20
3.		25,815 56
4.	d'ftr	22 81
4.	dep.	8,429 87
5.		1,708 92
7.		13,032 48
8.		13,850 78
10.		15,718 09
11.		5,621 60
12.		15,932 02
14.		23,897 51
15.		998 58
16.		813 95
17.		1,039
17.		15,280 27
18.		1,098 90
18.		1,349 60
19.		1,449 36
21.		18,649 97
22.		12,357 32
23.		8,274 95
24.		862 03
25.		34,318 61
26.		5,776 81

28.		32,438 52
29.		14,322 29
30.		11,779 72
30.	balance o. d.	15,118 62
		328,450 55

625 CR.

1885.

Aug. 31.	Bal. o. d.	13,548 33
		15,327 95
		16,557 14
		289 77
		49 25
		2,430 93
		12,189 32
		18,733 84
		26,032 90
		4 50
		10
		9,620 50
V. R.		7,614 65
		18,588 58
		18,088 58
		13,376 73
		1,784 86
		29,219 31
		6,122 84
		31,885 85
		6,872 53
		22,158 39
		7,613 60
		572 14
		6,859 55
		32,530 43
		10,368 08
		328,450 55

626 DR.

Oct. 1.	To dep.	8,097 61
2.		6,708 84
3.		2,660 40
3.		7,574 43
3.		13,056
5.	"	6,444 62
6.	"	2,583 52
6.	"	7,596 37
9.	Note	4,006 73
8.	Dep.	26
		58,728 78

CR.

1885.		
Sep. 30. Balance o. d.	15,118	62
	3	15
	4,006	73
	10,224	73
	6,241	52
	7,532	92
	3,699	91
	11,901	20
	58,728	78

Vouchers returned.

627 *Exhibits* 1 *to* 7, *Inclusive, to T. E. Gillespie's Testimony.*

EXHIBIT 1. Thomas E. Gillespie's Testimony.

No. 6802.

A. J. Gillespie & Co., live stock commission merchants.

KANSAS CITY, 9, 30, 1885.

Pay to the order of A. J. Snider & Co. sixty-five hundred & six $\frac{40}{100}$ dollars.

$6,506.40 A. J. GILLESPIE & CO.

To Kansas City Stock-Yards Bank, Kansas City, Kas.

(Endorsed:) For deposit with Kansas City Stock-Yards Bank for account of Andy J. Snider & Co.

628 EXHIBIT 2. Thomas E. Gillespie's Testimony.

No. 6808.

A. J. Gillespie & Co., live stock commission merchants.

KANSAS CITY, *Oct.* 1*st*, 1885.

Pay to the order of A. J. Snider & Co. eight thousand and seventy-two dollars.

$8,072. A. J. GILLESPIE & CO.

To Kansas City Stock-Yards Bank, Kansas City, Kas.

(Endorsed:) For deposit with Kansas City Stock-Yards Bank for account of Andy J. Snider & Co.

EXHIBIT 3. T. E. Gillespie's Testimony.

No. 6812.

A. J. Gillespie & Co., live stock commission merchants.

KANSAS CITY, *Oct.* 1*st*, 1885.

Pay to the order of Quinlan, Montgomery & Co. twelve thousand nine hundred & thirty $\frac{14}{100}$ dollars.

$12,930.14. A. J. GILLESPIE & CO.

To Kansas City Stock-Yards Bank, Kansas City, Kas.

(Endorsed:) For deposit to the credit of Quinlan, Montgomery & Co.

629 EXHIBIT 4. T. E. Gillespie's Testimony.

No. 6850.

A. J. Gillespie & Co., live stock commission merchants.

KANSAS CITY, *Oct.* 3, 1885.

Pay to the order of A. J. Snider & Co. two hundred and seventy-six $\frac{92}{100}$ dollars.

$276.92. A. J. GILLESPIE & CO.

To Kansas City Stock-Yards Bank, Kansas City, Kas.

(Endorsed:) For deposit with Kansas City Stock-Yards Bank for account of Andy J. Snider & Co.

EXHIBIT 5. T. E. Gillespie's Testimony.

No. 6847.

A. J. Gillespie & Co., live stock commission merchants.

KANSAS CITY, *Oct.* 3, 1885.

Pay to the order of Mountjoy, White & Co. ten hundred and sixty-six $\frac{97}{100}$ dollars.

$1,066.97. A. J. GILLESPIE & CO.

To Kansas City Stock-Yards Bank, Kansas City, Kas.

(Endorsed:) Mountjoy, White & Co.

630 EXHIBIT 6. T. E. Gillespie's Testimony.

No. 6835.

A. J. Gillespie & Co., live stock commission merchants.

KANSAS CITY, *Oct.* 3, 1885.

Pay to the order of J. R. Stoller & Co. sixty-seven & no 100 dollars.

$67.00. A. J. GILLESPIE & CO.

To Kansas City Stock-Yards Bank, Kansas City, Kas.

(Endorsed:) For deposit. J. R. Stoller & Co.

EXHIBIT 7. T. E. Gillespie's Testimony.

No. 6834.

A. J. Gillespie & Co., live stock commission merchants.

KANSAS CITY, *Oct.* 3, 1885.

Pay to the order of A. J. Snider & Co. nine hundred and twenty-nine $\frac{67}{100}$ dollars.

$929.67. A. J. GILLESPIE & CO.

To Kansas City Stock-Yards Bank, Kansas City, Kas.

(Endorsed:) For deposit with Kansas City Stock-Yards Bank for account of Andy J. Snider & Co.

631 **EXHIBIT 8. T. E. Gillespie's Testimony.**

W. P. Bowen & Co. in Account with A. J. Gillespie & Co.

1885.	Dr.		Cr.	
Ap'l 20	To 19 cattle, 20,940, 4.60	963 24	Ap'l 22	By cash of Bowen	72 35
	" 5 " 5,530, 4½	248 85	24	" " rebate fr't	80
	" 20 " 21,930, 4.42½	970 50	25	1 cattle	49 87
	" 19 " 22,420, 4.60	1,031 32	"	9 "	428 51
	" bonus	12 50	"	Chicago bill 63 "	3,151 60
21	" 34 " 39,770, 4.65	1,849 30	27	do. 217 "	12,597 26
	" 37 45,170, 4.80	2,168 16	29	cash, rebate fr't	69 69
	" 48 68,720, 5c	34 36	30	Chicago, 193 cattle	10,774
	" 36 46,470, 4.90	2,277 03	"	" 113 "	6,541 13
	" 32 36,030, 4.60	1,657 38	"	rebate fr't	262 50
	1 1,490, 3¼	149 22		bal. for'd	16,988 06
	" 2 2,240, 4½				
	" 16 20,760, 4¾	986 10			
22	" 3 3,670, 4.70	172 49			
	" 31 41,800, 4.85	2,027 30			
	" 21 25,930, 4.70	1,218 71			
	16 18,810, 4.70	971 82			
	2 1,950, 4½				
	35 42,070, 4.80	2,019 36			
	19 20,570, 4.65	956 50			
23	1 1,470,	533 98			
	7 9,540, 4.85				
	1 1,330, 3¾	49 87			
	17 21,490, 4.85	1,042 26			
24	shipper	6 00			
	19 23,080, 4.65	1,073 22			
	32 38,600, 4.60	1,775 60			
	23 29,400, 4¾	1,396 50			
	10 12,500, 4½	562 50			
25	shipper	24 00			
	Bowen	10 00			
"	exchange	4 75			
	hay	13 50			
	exchange	18 95			
27	36 47,300, 4.82½	2,282 22			
	1 1,390, 4.60	63 94			
	2 1,910, 4¼	1,937 00			
	36 40,200, 4.60				
	5 5,260, 4.60	241 96			
29	18 20,950, 4.55	953 22			
	81 94,960, 4.25	4,510 60			
	19 22,180, 4.65	1,031 37			
	20 23,100, 4.75	1,097 25			
	1 1,140, 4.70	997 34			
	15 20,080, 4.70				
	19 21,370, 4¾	1,015 07			
	1 1,440, 4½	626 72			
	9 11,830, 4¾				
	15 17,590, "	835 52			
	21 " 21,420, 4.60	985 32			
30	exchange	21 12			
	70 " 91,480, 4.90	4,482 52			
	4 " 5,140, 4.70	241 58			
	shipper	14 00			
	1 1,530, 3.35	51 25			
		51,014 97			51,014 97

632 (L. 240.)

W. P. Bowen & Co. in Account with A. J. Gillespie & Co.

		Dr.				Cr.	
May	1	To balance bro't for'd...	16,988 06	May	1	By cash, rebate fr't.....	66 00
		" 4 cattle, 4,260, 4.55..	193 82		4	" " Chic., 219 cattle...	11,708 94
		16 " 19,180, 4.70..	901 46		"	" " " 44 " ...	2,139 75
		18 " 20,480, 4.65..	952 32		"	" " " 72 " ...	4,605 71
		18 " 20,820, " ..	968 13		6	" reb. fr't.....	22 50
		20 " 25,500, 4¾...	1,211 25		"	" Chic., 270 cattle...	15,637 57
		14 " 17,820, "	84 645		7	" " reb. fr't.....	17 00
		2 " 2,330, 4½...	104 85		11	" " 19 cattle....	894 70
		110 " 143,130, 4.85..	6,941 80		"	" Chic., 79 ...	4,866 92
		8 " 9,650, 4½...	434 25		"	" " 138 ...	8,266 07
		16 " 18,650, 4.70..	876 55		"	" 38 ...	2,328 76
		18 " 21,780, 4.65..	1,012 77		"	" rebate fr't.....	75 00
		2 " 2,600, 4½...	177 00		13	" Chic., 58.....	3,570 21
		21 " 22,470, 4½...	1,011 15				
	2	shipper.....	26 00				
		Bowen.....	25 00				
		exchange.....	27 82				
	5	28 cattle, 34,430, 4.65..	1,600 99				
		8 " 10,720, 5c....	536 00				
		2 " 2,480, 4.60..	114 08				
		9 " 12,860, 5c.....	643 00				
		1 " 1,250, 4.60..	57 50				
		1 " 1,630, 5c....	81 50				
		9 " 10,320, 4.60..	474 72				
		shipper.....	31 00				
		80 cattle, 100,720, 4.65..	4,683 48				
	6	46 " 57,620, 4.85..	2,794 57				
		shipper & exchange..	31 55				
		33 cattle, 41,900, 4.85..	2,032 15				
		hay.....	8 00				
	7	38 cattle, 47,100, 4.85..	2,284 35				
	8	39 " 49,400, " ..	2,395 90				
		4 4,320, 4½...	194 40				
		15 20,520, 4.80..	984 96				
	9	shipper.....	14 00				
		19 cattle, 19,300, 4.55..	878 15				
		2 2,040, 4½...	91 80				
		3 3,740, 4.80..	179 52				
		Bowen.....	17 65				
	11	16 cattle, 17,540, 4.80..	841 92				
		shipper.....	12 00				
		38 cattle, 43,950, 4.65..	2,043 67				
		2 2,530, " ..	117 64				
		exchange.....	23 19				
	12	17 cattle, 24,530, 4.70..	1,152 91				
		37 50,560, 5.....	2,528 00				
		2 2,200, 4¼... }	1,047 58				
		20 21,440, 4.45.. }					
	13	exch. & ship., 2.00.....	7 35				
		1 cattle, 1,380, 4.90	67 60				
		109 137,280, 4.90..	6,726 74				
		7 8,200, 4.80..	393 60				
		12 15,140, 4.72½ }					
		18 22,300, 4.90... }	5,022 42				
		35 47,900, 5c..... }					
		14 17,070, 4.80... }					
		For'd.....	72,752 57			For'd.....	54,199 13

633 (L. 241.)

W. P. Bowen & Co. in Account with A. J. Gillespie & Co.—Continued.

1885.	Dr.		1885.	Cr.	
May 13	Bro't forward	72,752 57	May 13	By bro't for'd.....	54,199 13
"	To cash, shipper, 600; exc., 1.10.....	7 10	" "	" cash, rebate fr't.....	80 00
			" "	"	40 00
"	" 3 cattle, {1,160, 4c.. / 2,580, 4½}	156 04	" 14	" R., S. & Co., 21 cat....	1,069 33
"	" 31 " 37,080, 4.80....	1,778 88	" "	" rebate fr't.....	30 00
"	" 1 " 1,260, 4½ }		" 16	" R., S. & Co., 40 cat....	2,232 21
"	" 19 " 22,940, 5.10 }	1,379 64	" 18	" " 76 "	4,951 96
14	" 19 " 22,940, 5.10 }		" "	" " 100 "	5,946 43
"	" 16 " 19,640, 5	982 00	" "	" " 218 "	13,779 21
"	" 1 " 1,440, 4.....	57 60	" "	" rebate fr't.....	64 00
"	" 8 " 8,390, 4.65 ...	390 13	" "	" "	18 00
"	" 3 " 3,380, 4½ }		" "	" "	123 00
"	" 11 " 13,780, 5..... }	841 10			
15	" 16 " 19,950, 4.70....	937 65			
"	" 18 " 21,290, 4.80....	1,021 92			
"	" 2 " 2,000, 4½.....	90 00			
"	" 19 " 22,750, 4.85....	1,103 37			
"	" 19 " 23,860, 4.85....	1,157 21			
"	" 15 " 23,610, 5.40....	1,274 94			
"	" 15 " 17,550, 4¾.....	833 62			
"	" 1 " 910, 4¼.....	38 67			
"	" 33 " 59,700, 4¾.....	1,885 75			
"	" 17 " 21,460, 4.75.....	1,019 35			
"	" 1 " 1,150, 4.60. ..	52 90			
"	" 7 " 20,030, 4.70....	941 41			
"	" 17 " 23,520, 5.05....	1,187 76			
"	" 40 " 49,400, 4.80.....	2,371 20			
"	" 18 " 24,500, 5.10.....	1,249 50			
"	" 18 " 22,660, 4.90.....	1,110 34			
"	" 16 " 16,720, 4.65.....	777 48			
"	" 1 " 960, 4.....	38 40			
"	" 10 " 13,080, 4.85.....	634 38			
"	" 18 " 23,420, 5.10.....	1,194 42			
"	" 16 " 20,270, 4¾.....	962 82			
"	" 18 " 21,450, 4.85.....	1,040 32			
"	" 1 " 1,110, 4½.....	49 95			
"	" 17 " 16,710, 4.65.....	777 01			
16	" shipper, 4.00; exc., 3.12.....	7 12			
"	" 1 cattle, 1,000, 4.35.....	43 50			
"	" 2 " 2,640, 4.45.....	117 48			
"	" 1 " 1,240, 4.90.....	60 76			
"	" 35 " 48,120, 5.20.....	2,502 24			
"	" 19 " 21,000, 4.65.....	976 50			
"	" 15 " 19,370, 4.95.....	958 81			
"	" cash, F. J. Rappal.....	50 00			
"	" 51 cattle, 67,680, 4.95....	3,350 16			
"	" 50 " 66,240, 4.90.....	3,245 76			
"	" 14 " 14,090, 4.60.....	648 14			
"	" 19 " 22,560, 4.80.....	1,082 88			
"	" 37 " 42,980, 4¾.....	2,041 55			
"	" 4 " 4,400, "	209 00			
18	" exc., 37.11; shipper, $20.00.....	57 11			
"	" 2 cattle, 2,600, 5.05.....	131 30			
"	" 1 " 890, 4.30.....	38 27			
"	" 2 " 1,930, 4½.....	86 85			
"	" 1 " 810, 4.30.....	34 83			
"	" 3 " 3,070, 4.70.....	144 29			
"	" 35 " 35,410, 4.80.....	1,699 68			
"	" 19 " 25,640, 5.05.....	1,294 82			
"	" 18 " 24,880, 4.97½..	1,237 87			
	Bro't for'd.....	120,114 35		Bro't for'd.....	82,533 27

634 (L. 294.)

W. P. Bowen & Co. in Account with A. J. Gillespie & Co.—Continued.

1885.	Dr.			Cr.		
May 19	To am't bro't for'd	120,114	35	May 19	By am't bro't for'd.....	82,533 27
	" 1 cattle, 1,450, 5c.....	72	50	"	" cash, 3 cattle.....	115 68
	" 2 " 1,950, 4¼ ...	82	87	20	" R., S. & Co., 333 cattle	19,942 22
	" 34 " 38,480, 4¾ ...	1,827	80			
	" 31 " 34,720, 4.77½	1,657	87	21	" R, S. & Co., 226 cattle	13,710 56
	" 33 " 42,160, 5c. ...	2,108			" rebate fr't.....	25 00
	" 4 " 4,240, 4.65...	197	16		" cash, 1 cattle	49 25
	" 19 " 19,720, " ...	916	98			
	" 1 " 1,360, 3¼ ...	44	20	23	" rebate fr't.....	94 50
	" 18 " 21,600, 4.95...	1,069	20		" "	37 60
	" 36 " 43,020, 4.85...	2,086	47		" "	110 00
	" 34 " 40,140, 4.85, 6.49 off.....	1,940	30	25	" "	86 00
					" "	271 00
	" 1 cattle, 1,090, 4.30 ..	46	80	26	" R., S. & Co., 328 cattle	18,468 95
	" 28 " 36,200, 4.85...	1,755	77			
20	" exc.....	30	00	"	" R., S. & Co., 286 cattle	14,547 13
	" 20 cattle, 20,080, 46.72..	938	74			
	" 7 " 7,860, 4.70...	369	42	27	" rebate fr't.....	30 00
	" 30 " 31,580, " ...	1,108	71	19	" "	46 00
	" 18 " 22,860, 4.85..	1,484	26			
	" 20 " 23,480, 4 80...	1,127	04			
	" 20 " 20,850, 4.70...	979	95			
	" 19 " 22,170, 4.92½	1,091	87			
	" 39 " 41,700, " ...	1,959	90			
	" 16 " 21,140, 5.05...	1,067	57			
	" 15 " 17,470, 4¾...	829	82			
	" 23 " 24,300, 4.70...	1,142	10			
	" 24 " 24,520, 4.65...	1,140	18			
	" 1 " 1,320, 4¼ ...	56	10			
	" 15 " 14,530, 4.60...	668	38			
	" 11 " 18,110, 4¼ ...	747	03			
	" 1 " 1,020, 4.60...	46	92			
	" 2 " 2,670, 4.12½	110	13			
21	" exc.....	20	55			
	" 34 cattle, 37,550, 4.65...	1,746	07			
	" 1 " 1,430, 4.75...	67	92			
	" 15 " 18,200, " ...	864	50			
	" 30 " 32,950, 4.62½	1,523	93			
	" 31 " 34,920, 4.60...	1,606	32			
	" 18 " 21,080, 4.75...	1,001	30			
	" 16 " 21,420, 4.85...	1,038	87			
	" 1 " 1,470, 4.80...	70	56			
	" 4 " 4,680, 4½ ...	210	60			
	" 1 " 1,760, 3¾ ...	66				
	" 30 " 38,370, 4.85...	1,860	94			
	" 2 " 2,840, 4.92½	139	87			
	" shipper	8	00			
22	" 1 cattle, 1,110, 4.70...	52	17			
	" 9 " 10,450, 4.65...	485	92			
	" 5 " 7,110, 4.82½	345	05			
	" 9 " 11,870, " ...	572	72			
	" 1 " 1,220, 4½ ...	54	90			
	" 54 " 68,180, 4.85...	3,306	73			
	" 57 " 70,550, " ...	3,421	67			
	" 16 " 20,500, " ...	994	25			
	" 17 " 17,800, 4.60...	718	80			
	" 34 " 44,160, 4.80...	2,119	68			
	" 30 " 35,570, " ...	1,707	36			
	" 2 " 2,000, 4¼ ...	87	55			
	" 17 " 18,420, 4.60...	847	32			
	" 1 " 980, " ...	45	08			
	" 2 " 1,190, 4.80...	57	12			
	" 36 " 42,880, 4.80...	2,058	24			
	" 16 " 16,860, 4.60...	775	56			
	" 37 " 46,810, 4.85...	2,270	28			
	" 20 " 21,370, 4.65...	993	70			
	" 3 " 2,980, 4.40...	131	12			
	" 30 " 46,830, 5.15...	2,411	74			
	" 11 " 15,820, 5	791				
	" 30 " 41,080, 5	2,054	00			
	" 2 " 2,360, 4½ ...	106	20			
	" 22 " 27,880, 4.85..	1,352	18			
	" cash—50.00, 20.00.....	70	00			
23	" 16 cattle, 15,510, 4.70...	728	97			
	" 17 " 21,460, 4.90...	1,051	54			
	" 1 " 1,460, 4½ ...	65	70			
	" 17 " 22,830, 5.05...	1,152	91			
	" 17 " 20,280, 4.80...	973	44			
	" 11 " 15,030, 5	751	50			
	" 4 " 4,300, 4.60...	197	80			
	" 4 " 4,880, 4.90...	239	12			

W. P. Bowen & Co. in Account with A. J. Gillespie & Co.—Continued.

1885.	Dr.		Cr.	
	To 1 cattle, 1,180, 4.90...	57 92		
	" 1 " 1,480, 5.15...	76 22		
	" 18 " 22,510, 4.80...	1,080 48		
	" 26 " 35,420, 5.10...	1,806 42		
	" 1 " 1,220, 4.40..	528 50		
	" 8 " 16,570, 5	53 68		
	" 2 " 2,680, 5	134 00		
	" 1 " 1,120, 4.90...	54 00		
		195,825 14		
	Am't bro't for'd	195,825 14		
May 25	To cash, exc., 49,73; er. C. G. M., 1.00	50 73		
	" 19 cattle, 18,090, 4½ ...	814 05		
	" 19 " 23,400, 4.95...	1,158 30		
	" 37 " 41,990, 4.77½	2,005 02		
	" 76 " 92,340, 4.95...	4,570 83		
	" 88 " 117,520, 5.10...	5,993 52		
	" 34 " 39,940, 4.85...	1,937 09		
	" 20 " 20,400, 4.65, $2 off.....	946 60		
	" 36 cattle, 41,600, 4.80...	1,996 80		
	" 20 " 18,960, 4.55...	862 68		
	" 16 " 16,800, 4.70...	789 60		
	" 3 " 2,950, 4¼ ...	125 37		
	" 36 " 41,680, 4.85...	2,166 98		
	" 2 " 1,980, 4.40...	87 12		
26	" cash, shippers	58 00		
	" 56 cattle, 68,340, 4.90...	3,348 66		
	" 17 " 22,010, 5	1,100 50		
	" 2 " 2,330, 4.85...	113 00		
	" 18 " 21,400, 4.80...	1,027 20		
	" 1 " 1,160, 4½ ...	52 20		
	" 13 " 17,580, 5.15...	905 37		
	" 1 " 1,310, " ...	67 46		
	" 50 " 64,820, 5.10...	3,305 82		
	" 4 " 4,300, 4.60..	197 82		
	" 1 " 1,520, 4¼ ...	68 40		
27	" 16 " 19,770, 4.80...	948 96		
	" 3 " 3,560, " ...	170 88		
	" 19 " 21,650, 4.75..	1,030 44		
	" 21 " 24,600, 4.90...	1,205 40		
	" 6 " 7,500, 4.85...	363 75		
	" 11 " 13,400, " ...	649 90		
	" cash, shipper	18 00		
	" "	40 00		
	" 7 cattle, 9,500, 4.85 ..	460 75		
	" 10 " 14,300, 4.80...	686 40		
		235,148 74	Bro't for'd to 295...	150,067 16

635 (L. 295.)

May 27	To am't bro't for'd.....	235,148 74	May 27	By am't bro't for'd.....	150,067 16
	14 cattle, 17,960, 4.80..	862 08	28	" R., S. & Co., 252	26,240 32
	2 " 2,220, 4½...	99 90		" cash, 70.....	4,267 76
28	exchange.....	69 49	29	" rebate fr't.....	50 00
	shipper.....	44 00		" R., S. & Co., 435.....	23,996 80
	cash.....	25 00	30	" rebate error.....	2 00
	18 cattle, 21,350, 4¾...	1,014 12	June 1	" R., S. & Co., 163.....	9,995 70
	1 " 1,250, 4½...	56 25		" cash, 13.....	460 56
	2 " 2,140, " ..	96 30		" R., S. & Co., 233.....	12,834 15
	67 " 17,120, 4¾...	3,663 20		" rebate fr't.....	25 00
	12 " 14,600, 4.80.	700 80		" R., S. & Co., 110.....	6,877 55
	19 " 23,730, "	1,139 04		" " 222.....	11,491 53
	shippers.....	60 00	5	" rebate fr't..... ...	58 00
29	34 cattle, 38,940, 4.65.	1,810 71	6	" R., S. & Co., 126.....	8,047 90
	1 " 1,030, 4.....	41 20		" cash, 1.....	42 12
	39 " 43,020, 4.75..	2,043 45	9	" rebate fr't.....	145 00
	R, S. & Co.:			" R., S. & Co., 97.....	5,588 18
	29, d'ft by J. A. & C..	2,077 62		" " 300.....	18,153 24
	shipper.....	18 00	10	" cash, rebate error Peters.....	33 10
	exchange.....	34 53	May 28	" R., S. & Co., 332.....	19,600 15
	hay	17 50			

W. P. Bowen & Co. in Account with A. J. Gillespie & Co.—Continued.

1885.	Dr.			Cr.	
June 1	110 cattle, 142,890, Velawsky, 4.92		7,037	33	
	48 cattle, 43,300, 4.55		1,970	15	
	65 " 81,310, 4.85		3,943	53	
	16 " 18,640, 4.60		857	44	
	20 " 23,030, 4.72		1,088	16	
	25 " 27,140, 4.70		1,275	58	
	38 " 39,040, 4.65		1,815	36	
	89 " 118,740, 5.10		6,055	74	
2	19 " 22,900, 4.80		1,099	20	
	exc		15	00	
	shipper		24	00	
	bonus		8	00	
	19 cattle, 21,370, 4.95		993	70	
	exchange		19	33	
3	15 cattle, 20,420, 4.95		1,010	79	
	2 " 2,340, 4½		105	30	
	31 " 38,150, 4.80		1,831	20	
	2 " 3,020, 5		151	00	
	1 " 1,350, 4.80		64	80	
	16 " 18,300, 4.70		860	10	
4	exchange		10	50	
	shippers		30	30	
	8 cattle, 10,260, 4.90		502	74	
	1 " 1,080, 4¾		51	30	
	3 " 3,370, 4.65		156	70	
	5 " 5,870, 4.70		275	89	
	156 " 205,780, 4.90		10,085	22	
	1 " 1,060, 3.60		38	16	
	2 " 2,680, 4¾		127	30	
	1 " 1,120, 4.65		52	08	
	1 " 1,400, 4.65		65	10	
	22 " 33,180, 5.15		1,704	65	
	1 " 1,060, 4¼		45	05	
	2 " 2,000, 4.40		88	00	
	exchange		17	32	
	1 cattle, 1,070, 4,60		49	22	
	27 " 30,000, "		1,380	00	
	36 " 39,340, 4.70		1,848	98	
	18 " 18,510, 4.62½		856	08	
	34 " 46,510, 4.80		2,235	36	
	error 17 cattle Borse & Co		100	00	
	2 cattle, 2,530, 4.75		120	17	
6	21 " 31,060, 5		1,553	00	
	exc		12	10	
	shipper		14	00	
	cash		25	00	
	shipper		14	00	
	20 cattle, 20,930, 4.60		962	78	
	22 " 23,550, 4¾		1,118	62	
	1 " 1,280, 4¼		54	40	
	37 " 45,970, 4.77½		2,195	05	
	38 " 47,250, 4.90		2,315	25	
	31 " 37,940, 4.95		1,878	03	
8	shipper		5	00	
	F. J. R		30	00	
	16 cattle, 25,260, 5.15		1,300	89	
	12 " 18,580, "		956	87	
	1 " 1,470, 4		58	80	
	1 " 1,810, 3.60		65	16	
	18 " 20,020, 4.80		960	96	
	1 " 860, 4¼		36	55	
	46 " 46,570, 4.70		2,188	79	
	40 " 50,800, 5		2,540	00	
	2 " 2,820, 4¾		133	95	
	18 " 17,600, 4.70		827	20	
	shipper		14	00	
9	82 cattle, 93,760, 4¾		4,570	80	
	17 " 19,620, 4.72		927	04	
	4 " 4,840, 4.70		227	48	
	1 " 1,600, 4¼		68	00	
	10 " 12,390, 5		619	50	
	exc		35	70	
	shippers		40	00	
10	25 cattle, 31,870, 4.80		1,529	76	
	2 " 2,240, 4½		100	80	
	8 " 9,820, 4.80		471	36	
		***326,936**	**40**		***297,978** **22**

* Figures printed in bold-face type in pencil in original.

636 *W. P. Bowen & Co. in Account with A. J. Gillespie & Co.*—Continued.

1885.	Dr.		June —	Cr.	
June 10	To am't bro't for'd.....	*326,936 40		By am't bro't ford.....	*297,976 23
	" 20 cattle, 22,000, 4 60...	1,012 00	11	" R., S. & Co., 160 cattle.....	9,136 93
	" 1 " 1,200, 4¼....	51 00			
	" exchange	13 75	12	" R., S. & Co., 7 cattle..	314 58
11	" 15 cattle, 20,290, 5c.....	1,013 50		" R., S. & Co., 149 cattle.....	8,775 24
12	" 3 " 3,350, 4.30...	144 05			
	" exchange	46	13	" rebate fr't.....	31 50
	" 10 cattle, 13,450, 4.80...	645 60	15	" R., S. & Co., 118 cattle.....	6,672 45
	" 1 " 1,400, 4.75...	66 50			
	" 17 " 21,760, 4¾....	1,033 60	"	" R., S. & Co., 59 cattle.....	3,441 44
	" 1 " 1,030, 4.40...	45 32			
	" 24 " 30,950, 5.....	1,547 50		" balance.....	21,509 10
	" 33 " 44,620, 5.10...	2,275 62			
	" 18 " 21,030, 5.....	1,051 50			
	" 6 " 7,920, 4.70...	372 24			
	" 11 " 13,860, 4.80...	665 28			
	" 1 " 1,010, 4½....	45 45			
	" 15 " 18,190, 4.85...	882 21			
	" 86 " 97,400, 4.70, 10 off.....	4,567 80			
	" 16 cattle, 22,950, 5.05...	1,158 97			
	" shipper	16 00			
	" error Means & sons...	14 58			
	" exchange	13 21			
13	" 20 cattle, 21,380, 4.60...	983 48			
	" 1 " 1,540, 4.30...	66 22			
	" 26 " 25,700, 4.40...	1,130 80			
	" 36 " 39,650, 4.80...	1,903 20			
	" shipper	12 00			
	" cash.....	20 00			
	" exchange	15 22			
	" 2 cattle, 3,080, 5.....	154 00			
		347,857 46			347,857 46
	To balance.....	21,509 10	*17	By R., S. & Co., 259 cattle.....	16,091 38
				By R., S. & Co., 83 cattle.....	4,216 25

637 EXHIBIT 9 of T. E. Gillespie's Testimony.

K. A. B.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. Such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *Ap'l* 20, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We this p. m. ship you 3 cars cattle acc. Bowen, bought by Fred. Rappal, and if you don't do some good on this lot don't think you will hear from Bowen again. They are a good drove of cattle. We make draft on this lot for $3,000.00, and will make draft for balance of last week's work; also protect drafts & oblige—

Yours truly, A. J. GILLESPIE.

W. P. Bowen & Co., 1st deal.

*Words and figures printed in bold-face type in pencil in original.

638 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 4, 21, 1885.

Mess. Rappal, Sons & Co.

GENTS: We made draft on you for balance $1,846.68 to-day, and think will get out ten or 12 cars to you this afternoon. It is raining here to-day hard, & market slow; have about 100 cars cattle in at present; will drop you a line this p. m.

Yours, &c., A. J. GILLESPIE & CO.

P. S.—Telegraph Price & Nett on three cars sent you yesterday.

Yours, &c., A. J. G. & CO.

In the 4 cars cattle you sold for J. K. Smith there is one steer short. Please look it up. We understand there was 1 dead on road.

639 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., 4, 21, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you a few cars to-night, 24 via C. & A. & 2 via H. & St. Joe. We hand you list as they are billed. Fred, Sr., will be in Chicago when cattle arrive. We made drafts on you for 22,000.00 in 2 drafts (10,000, 12,000) and will make a draft to-morrow for 5,000.00, making $27,000.00 on the 26 cars. Take care of drafts & oblige—

Yours, &c., A. J. GILLESPIE & CO.

640 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

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KANSAS CITY, Mo., ——, 188–.

Acc.:

Wm. James	3 cars,	54 cattle.
W. P. Bowen	12 "	217 do.
Stubs & Neiswander	4 "	78 do.

The Stuls & N. cattle are billed 2 cars Stulls & 1 car Neiswander & 1 car P. R. Cassel.

J. D. Small	3 cars	bulls, 57 cattle.
Do.	2 "	steers, 36 cattle.
C. & M.	2 "	via H. & St. Jo, 38 cattle.

The 2 cars of C. & M. go via H. & St. Joe R. R.

641 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., commission merchants; office, room 15 Exchange building.

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KANSAS CITY, Mo., *Ap'l* 22, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We this p. m. ship you 18 cars; for J. D. Small, 3 cars—2 cars direct & one billed J. S. Franklin, and for Oystee Bros. 6 cars direct & 2 cars billed Neff & Henderson; for W. P. Bowen, 6 cars direct & one A. R. Whartman. We send orders by Shippen for the 4 cars that are billed through. We made draft on you to-day for $10,000.00 & one for $1,000.00; that we give a man to take it to Mic.; will make another draft to-morrow on these for 8,000.00 more. We also hand you an order for 2 cars sent yesterday. We also telegraphed & order to the Yard Co. to deliver the same.

Yours, &c., A. J. GILLESPIE & CO.

642 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Ap'l 22d*, 1885.

1, A. R. Waterman. 6, Bowen.

Bowen & Rappal, 7 cars:

31	cattle,	41,800,	4.85	2,027 30
21	"	25,930,	4.70	1,218 71
16	"	18,810,	"	8,840 07
2	"	1,950,	4½	87 75
17	"	21,490,	4.85	1,042 26
19	"	20,570,	4.65	956 50
35	"	42,070,	4.80	2,019 36
141				$8,235 95

3 of this lot put in with Larmon cattle.

*10,822 25	8,235 95
3,258 54	3,258 54
	11,494 49
	10,822 25
	672 24
	583
	1,255

643 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Ap'l 21st*, 1885.

Bowen and Rappal, 12 cars:

16	cattle,	20,760,	4.75	$986 10
34	"	39,770,	4.65	1,849 30
7	"	9,540,	4.85	533 98
1	"	1,470,		

* Figures printed in bold-face type in pencil in original.

37	cattle,	45,170,	4.80		2,168 16
48	"	68,720,	.05		3,436 00
36	"	46,470,	4.90		2,277 03
32	"	36,030,	4.60		1,657 38
2	"	2,240,	.04½		100 80
1	"	1,490,	.03¼		48 42
3	"	3,670,	4.70		172 49
			Bonus on 8 cattle		5 00
217					$13,234 66

644 A. J. Gillespie. Thos. E. Gillespie. John F. Gillespie. Louis J. Gillespie.

A. J. Gillespie, live stock commission merchants; office, room 15 Exchange building.

KANSAS CITY STOCK-YARDS.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us.

W. P. Bowen & Rappal:

19	cattle,	1,214	4¼		
32	do.	23,080	4.65		1,073 22
23	do.	1,206 1,278	4.60		1,775 60
10	do.	29,400	4.75		1,396 50
36	do.	1,250	4½		562 50
120					
9	sold here,	12,500 1,314	48.22		2,283 19
111					7,091 01
2	that was left out last shipment.	9,680 47,320	4.45		430 76
113		150,900			6,660 25

Cattle, 6 cars, 90.00.

645 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *A'pl* 25, 1885.

Mess. Rappal, Sons & Co., Chicago.

GENTS: We send you 8 cars to-night, 6 cars for Bowen, 4 billed direct, & 2 cars billed from M. S. Peters & Co. that go in with Bowen's cattle. We also ship 2 cars for ac. James, 1 car direct, one bill to us, from H. C. H. Put these 2 cars together, and cost here 4.72.2. They are high. I think you will have to work. We make draft on you for $8,500.00, & also hand you cost of Bowen cattle.

Yours, &c., A. J. GILLESPIE & CO.

646 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *Ap'l* 28, 1885.

Mess. Rappal, Sons & Co.

GENTS: We send you 2 cars cattle, 44 h'd for acc't of Bowen, billed A. Snider; send order by shipper; made draft on same for $2,200.00, cattle sold to-day; had about 40c. to ship on & some on good rates. They hold cattle too high here, Bowen thinks.

Yours, &c., A. J. GILLESPIE & CO.

647 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feed stock. All such parties will find it to their advantage to correspond with us. Customers will please advise of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *Ap'l* 29, 1883.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you 11 cars, acc. Bowen, 219 cattle; cost, 4.60 to 4.75—$12,052.41. We also send you one car for James, 19 cattle; cost, 4.85: would like to see this lot make some money. We made draft on you for 12,000.00 & $1,200.00 on the 12 cars cattle. We have not got any bills of cattle sold Monday; look for them in morning. Keep us well posted. It rained here all day & was bad.

Yours, &c., A. J. GILLESPIE & CO.

P. S.—Bowen said that your messages are a little late & other buyers get the start on the best lots; but cattle have not been good for a day or two.

648 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to all parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *Ap'l 30th*, 1885.

Mess. Rappal, Son & Co.

GENTS: We send you 4 cars cattle acc. Bowen, 72 cattle, and one car acc. James, 19 cattle; made draft for 5,500.00.

Yours, &c., A. J. GILLESPIE & CO.

649 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., *May 2d*, 1885.

Mess. Rappal, Sons & Co., Chicago.

GENTS: We this 2 p. m. send you 2 cars cattle, acc. James—40 head; made draft for $2,000.00. Let us know early how 1 load—James—that you hold over.

Yours, &c., A. J. GILLESPIE & CO.

650 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *May* 4, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you to-night one car cattle acc. James & 7 cars acc. Snyder & Vance. M'rs. Snyder & Vance go with cattle. This is a good drove. To-day we made draft for $8,000.00. Please protect same & let us know how they sell by wire.

Yours, &c., A. J. GILLESPIE & CO.

651 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *May 5th*, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you 7 cars cattle acc. Bowen—4 via C. & A. R.

R., 80 cattle, and via H. & St. Joe 3 cars—1 on rate billed to Snyder & Co.—& we hand you order for same; shipper went off & left it. We make draft on you for $7,500.00 on the 7 cars—138 cattle.

Yours, &c., A. J. GILLESPIE & CO.

***80 cattle, cost**	**4.65**		
18 "	**5c.**		
12 "	**4.60**		
110	**4.65**		55
28			45
138		515	
		462½	40
		52½	

652 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *May 6th*, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We ship you 4 cars cattle acc. Bowen, 2 cars billed Brockway, & send orders by shipper; balance straight. We make draft on you for $5,000.00. The cattle have to-day sold some stronger; run fair.

Yours truly, A. J. GILLESPIE & CO.

GENTS: The car cattle you sold last Friday for acc. of James we have not got any bill for yet. You telegraphed that they *was* sold at 5.40. Please send bill.

***79 cattle; cost, 4.85.**

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* Words and figures printed in bold-face type in pencil in original.

653 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *May* 7, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you 2 cars cattle to-night, & make draft for $2,250.00 on same. Will you get statement of freight on charges on cattle shipped by J. D. Small; also on the 8 cars shipped by Oyster Bros.? There is an overcharge. If you can, give amount of feed at road-house on east lot, & oblige—

A. J. GILLESPIE & CO.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 5, 9, 1885.

Mess. R. S. & Co.

GENTS: We send you 1 car, 21 cattle, acc. Bowen, billed H. C. H. to us. Make draft for $1,000.00. Please protect same.

Yours truly, A. J. G. & CO.

Cattle cost—

16	17,540	4.80	
3	3,740	11	
2	2,040	4½	$1,113 24
—	—	R'b't. fr't.	25 00
21	23,320		
		Cost.....	1,088 24

* Words and figures printed in bold-face type in pencil in original.

654 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., *May* 8, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you 8 cars; 5 cars acc. James, 1 on rate billed McCoy & Underwood that belongs to James; 3 cars acc. Bowen, 39 cat., 49,400, 8.85; 4 cattle, 4,320, 4½; 15 cattle, 20,520, 4.80; 58 cattle, cost $3,575.26. James' cattle, 100 head, cost from 4.60 to 4.70. We made draft for $9,000.00; protect same. The 7 cars sold for Bowen to-day & yesterday make about $270.00. Can you make these 3 cars do as well?

Yours, &c., A. J. GILLESPIE & CO.

655 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *May* 11*th*, 1885.

Rappal, Sons & Co.

GENTS: We ship you 40 head for Bowen & 5 cars for James. Do your best; they cost high. We are working this end well; do your best up there.

Yours as ever, A. J. GILLESPIE & CO.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 5, 12, 1885.

Mess. Rappal, Sons & Co., Chicago.

GENTS: We send you, via C. & A., 8 cars cattle—4 cars ac. Bowen, one on a rate billed Neffs & Henderson, & 3 ac. James, and one for Small—8 loads of good cattle. We make draft on 7 cars sent yesterday for $7,500.00, & on 8 cars to-day, $9,000.00. Protect same.

Yours truly, A. J. GILLESPIE & CO.

Ac. Bowen, 17 C., @ 4.70.
37 C., " 5.00.
20 C., " 4.45.
2 C., " 4¼.
Cost, $4,728.49.

656 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 5, 15, 1885.

Mess. Rappal, Sons & Co., Chicago.

GENTS: We ship you 18 cars, ac. Bowen, 338 cattle, & for James 4 cars, 2 cars billed to C. G. Means & Son, 37 cattle, & 2 cars direct, acc. James, 39 cattle. We make 2 drafts on same—one for $18,000, to-day, & one for $7,000.00, to-morrow; total, $25,000.00 on 22 cars. Think you will have some work to make this lot of cattle do any good.

Yours truly, A. J. GILLESPIE & CO.,
T. E. GILLESPIE.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *May* 14, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you 9 cars cattle—5 cars, 97, ac. Bowen; 3 cars, 57, ac. James & Rappal; 1 car, 20, Wm. James, billed Jno. Akin; made draft for $11,000.00 on James. Cattle sold to-day done pretty well; made some money. F. J. R., Sr., has gone to look at some cattle down at the distillery.

Yours truly, A. J. G. & CO.

657 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *May* 13*th*, 1885.

Mess. Rappal, Sons & Co., Chicago.

GENTS: We ship you 12 cars cattle acc. Bowen, 2 cars billed Young to us on rate. We send you one car acc. James, billed Ross to Q., M. & Co., & send order by shipper. He went off & did not take one, & we send one by mail. We make draft for 14,000.00 on cattle to-day. The old gent. is working, & it was pretty warm here to-day. He will find it so in June.

Yours, &c., A. J. GILLESPIE & CO.

Metropolitan Hotel, cor. Fifth and May Sts.; Eldridge & McCoy, prop's.

KANSAS CITY, MO., 5, 18, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We ship you 15 cars cattle—12 for Bowen, 8 billed direct & 4 on rate; 2 billed Stults & Neiswanger & 2 J. M. Matthall; & we send orders by shipper. We also send 3 cars N. Englis; want kept separate & sold separate. Make draft for $12,000.00 to-night & one

for $5,000.00; protect same. It has been raining here all day & very bad. Ship all via Han. & St. Jo.

Yours truly, A. J. G. & CO.

658 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *May* 18, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you to-night, via Han. & St. Jo road, 4 cars billed Jackson Bros. and James, & for Bowen 5 cars; 3 cars billed Quinlan, M. & Co., 1 b'd to A. J. G. & Co., & 1 direct to you from Bowen; think cattle you sold to-day will just about pay out; don't think cattle sold here to-day any lower than last week. We make draft on cattle to-day for $11,000.00.

Yours truly, A. J. GILLESPIE & CO.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., 5, 19, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you to-night 12 cars, 233 cattle, acc. Bowen, 2 cars billed H. Lawrence, and send you order by shipper. Make draft for $13,000.00. Cattle to-day had about 35 to 40c. to run on, but don't think they will do any good.

Yours truly, A. J. G. & CO.

Thursday 5 to 10 lower; 2,000.*

* Words and figures printed in bold-face type in pencil in original.

659 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *May* 20, 1885.

Rappal, Sons & Co., Chicago, Ills.

D'R SIR: We send you one car cattle acc. Nicholson; 3 cars acc. James; 2 billed M. Munger; 14 cars for Bowen; 1 on rate, bal. direct. James wants his 2 best loads sold together. You shape other cattle to sell to best advantage. Bowen cattle cost to-day, 5 cars 4.70, 2 at 4.80 and 4.85, & 3 at 4.92½ & one 5.05, and a few scattering steers, making in all 287 head. James cattle cost—2 at 4.90 & one 4.75. We made draft on you to-day for $19,000.00 and will make draft to-morrow for $8,000.00, as we have not been drawing our balances.

Yours truly, A. J. GILLESPIE & CO.

660 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., *May* 22*nd*, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We this p. m. send you 3 cars for James, billed as follows: 2 Hargrave to us & one to Metcalf, Moore & Co., 57 cattle; and for Bowen & R., 24 cars, 442 cattle; 14 cars direct; 3 cars, A. J. Snider & Co.; 2 cars, Anthony; & 2 cars, M. S. Peters & Co.; 1 car, Young, to A. J. G. & Co.; 2 cars, Durning & Spurgeon. We made draft on you to-day for $20,000 & will make one for $10,000.00 to-morrow.

Yours, &c., A. J. G. & CO.

L. L. Rappal: I give w'ts & price of cattle bo't to-day. T. E. G.*

* Words printed in bold-face type in pencil in original.

(Same date and heading as above.)

*30	cattle,	41,080	cost 5c,	
22	"	2,360	4½	
22	"	27,880	4.85	
14	"	18,980	4.82½	
1	"	1,220	4½	
54		68,180	4.85	
16		20,500	4.85	
16		16,860	4.60	
17		17,800	4.60	
34		44,160	4.80	
36		42,880	4.80	
30		35,570	4.80	
2		2,060	4½	
17		18,420	4.60	
1		980	4.60	
1		1,190	4.80	
1				
57		70,550	4.85	
30		46,830	5.15	
11		15,820	5	
37		46,810	4.85	
20	(22)	21,370	4.65	
				$27,089.05
20	448			

661 (Same heading as letters.)

KANSAS CITY, MO., SATURDAY, *May* 23*rd*, 1885.

Bought by Bowen & R.:

*16	cattle,	15,510,	4.70
17	"	21,460,	4.90
17	"	22,830,	5.05
17	"	20,280,	4.80
26	"	35,420,	5.10
10	"	13,250,	5c.
18	"	22,510,	4.80
11	"	15,030,	5
4	"	4,300,	4.60
5	"	6,060,	4.90
1	"	1,480,	5.15

150 in 8 cars, 888; make draft for $9,000.00.

2 cars billed Stulls & Co., 888, 8.
1 " " Young to Gillespie.
5 " acc. Bowen direct.

8,888
(8 cars.)
150 in 8 cars.
8 cars.

375 H.

* Words and figures printed in bold-face type in pencil in original.

662 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *May* 26, 1885.

Mess. Rappal, Sons & Co., Chicago.

GENTS: We send you 2 cars cattle, acc. Pat. Phalan, 37 cattle; 1 car billed Geo. R. Burses & Co. We also send you 5 cars acc. James, billed on Raye, & we send orders by shipper; also send 9 cars acc. Bowen, 163 cattle. We made draft to-day for $15,000.00, & will make one for 3,000 more to-morrow.

Yours truly, A. J. GILLESPIE & CO.

*** Cost of Bowen cattle:**

56	**cattle,**	**68,340, 4.90**	
17	**"**	**22,010, 5.00**	
18	**"**	**21,400, 4.80**	
13	**"**	**17,580, 5.15**	
1	**"**	**1,310, 11**	
50	**"**	**64,820, 5.10**	
2	**"**	**2,670, 4½**	
2	**"**	**2,330, 4.85**	
4	**"**	**4,300, 4.60**	
163		**204,760**	**$9,188.43**

James' cattle cost 5c., $43\frac{00}{100}$ 43.00

997.43.

918,800 | 204,760 Co.

204760)918842(45.3
819040

1098000
1023800

742300
614280

663 *Postal Card U. S.*

(Kansas City, Mo., May 28 m.) (U. S. postage, one cent.)

Nothing but the address can be placed on this side.

K. C., *May* 28, '85.

Rappal, Sons & Co., Chicago, Ills., Union Yards.

GENTS: Give us expense bill of cattle sold Monday, shipped from here on Thursday, Friday, & Saturday, 21, 22, & 23rd of May; the freight is too much freight; also on the Oyster cattle that we sent letter to you for some time ago.

Yours, &c., A. J. GILLESPIE & CO.

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* Words and figures printed in bold-face type in pencil in original.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., 5, 29, 1885.

Rappal, Sons & Co., Chicago.

GENTS: Send you 4 cars acc. Bowen, 77 cattle, & 2 cars acc. Phalan, 37 cattle; made draft for $6,000.00. Have you not got some 3 or — cattle that you have not sent us bills for acc. Bowen?

Yours truly, A. J. GILLESPIE & CO.

664 Cost of cattle acc. Bowen:

34 cattle, 38,940, 4.65.
1 " 1,030, 4.
39 " 43,020, 4.75, 3,895.36.

Acc. Phalan:

37 cattle, 47,500, 3.85, 230.75.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

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KANSAS CITY, MO., *June 1st*, 1885.

Rappal, Sons & Co.

GENTS: We made draft on you to-day for 7,000 on 110 cattle shipped from Netawaka, Ks., on Saturday night. We send you 10 cars acc. Bowen, (1) one acc. Phalan, & 2 cars acc. James, & make draft for $14,000.00. The cattle from Netawaka should be in Chicago to-day.

Yours truly, A. J. GILLESPIE & CO.

***Bowen:**

48	**cattle,**	**43,300,**	**4.55**	**35**
65	**do.**	**81,310,**	**4.85**	**40**
16	**do.**	**18,640,**	**4.60**	**3.05**
20	**do.**	**23,030,**	**4.72**	**4.70**
25	**do.**	**27,140,**	**4.70**	**35**
38	**do.**	**39,040,**	**4.65**	

			25
Phalan's cost,	**4.872**	**37½**
James',	**1,**	**4.80**	**32½**
	1,	**4.90**	**35**

* Words and figures printed in bold-face type in pencil in original.

665 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., *June 2nd*, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you to day 9 cars—2 cars acc. Phalan, 7 cars acc. Bowen. Made draft on same for $10,000.00.

Yours truly, A. J. GILLESPIE & CO.

*** Bowen cattle cost:**

89	cattle,	118,740,	@ 5.10	
19	do.	22,900,	4.80	
19	do.	21,370,	4.65 & $8	
127		163,010		$8,156,64

44270		44270
470		472½
309890		22135
177080		3888540
208069		7890
132810		880
221350		135975

Phalan's cost:

17	cattle,	20,620,	4.82½
20		21,840,	4¾
1		1,350.	4½
38			$2,093.06

38)43810(1152
38
58
38
201
190
110

* Words and figures printed in bold-face type in pencil in original.

666 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, Mo., 6, 5, 1885.

Rappal, Sons & Co.

GENTS: Send you 7 cars to night acc. Bowen; made draft to-day for 7,500.00. Cattle sold to day acc. James was low.

We are waiting for bills for 5 cars, 88 cattle, acc. James, sold at 5.30, as you telegraphed, shipped from here on May 26th.

Yours, &c., A. J. GILLESPIE & Co.

"Cattle cost:"

27 cattle,	30,000,	***1111 ≠**,	4.60
36 "	39,340,	**1092 ≠**,	4.70
21 "	31,060,	**1460 ≠**,	5c.
18 "	18,510,	**1028 ≠**,	4.62½
34 "	46,570,	**1369**,	4.80
136)	**165,480(1216**		
	136		
	294		
	272		
	228		
	136		
	920		
	1216		

667 *Postal Card U. S.*

(Kansas City, Mo., Jun. 5, 3 p. m.) (U. S. postage, one cent.)

Nothing but the address can be placed on this side.

KANSAS CITY, *June* 5.

Rappal, Sons & Co., Union Yards, Chicago, Ills.

GENTS: We have been waiting for bills on 5 cars, 88 cattle, shipped to you from here on 26. You telegraphed sales, but have not got any bills yet acc. James. Please send them.

Yours truly, A. J. GILLESPIE & CO.

P. S.—In your bill of 3rd, 222 cattle, there is an error in commissions.

* Figures printed in bold-face type in pencil in original.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *June* 10, 1885.

Rappal, Sons & Co., Union Yards.

GENTS: We send you 3 cars acc. James & one car acc. Phalan & 3 cars acc. W. P. Bowen, 59 cattle; make draft on you for $8,500.00. Cattle are all losing money.

Yours, &c., A. J. GILLESPIE & CO.

668 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *June 9th*, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: Ship 6 cars acc. Bowen.
" 2 do. acc. Phalan.
5 cars of Bowen's billed to J. M. Talbot.
2 " of Phalan's to J. R. Stole & Co.
Make draft 8,500.00.

Yours, &c., A. J. GILLESPIE & CO.

Bowen's cattle cost:

82	cattle,	93,760, **1,143**,*	4.87½.
17	do.	19,620, **1,154**,	4.72½.
4	do.	4,840, **1,210**,	4.70.
1	do.	1,600, **1,600**,	4¼.
10	do.	12,390, **1,239**,	5c.
114		132,210	

5, ave. 4.90.
1, " 4.70.
1 st'g, 4¼.
2 loads @ 4.80.
212,542.

Phalan's cost:

28	c.,	31,550, **1,126** ⅛,	4⅞.
1	"	1,550,	4⅜.
5	"	5,720, **1,144**,	4.60.
5	"	5,390, **1,078**,	4.65.
39		44,210	

*Figures printed in bold-face type in pencil in original.

669 EXHIBIT 10 of T. E. Gillespie's Testimony.

K. A. B.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *June* 13, 1885.

Mess. Rappal, Sons & Co., Union Stock-Yards, Chicago.

GENTS: We send you 4 cars, 83 cattle, acc. Bowen, & one car cows acc. James; will make draft for 4,500.00. We *was* after Irwin, Allen & Co. for rebate fr't for $105.33 on 3 cars cattle shipped by them on May 23d. They claim they sent you a draft for same; will get a statement by Monday. The loss is over $4,200.00, so you won't think we are overdrawing if acc. is over.

Yours, &c., A. J. GILLESPIE & CO.

Cost of cattle shipped to-day:

20 cattle, 21,380, 4.60			488 00		
1 " 1,540, 4.30			183 00		
26 " 25,700, 4,40			———	773	
36 " 39,650, 4.80			671 00		4,267 00
—			102		4,83 70
83 h'd		$4,083 70	———		———
			773		183 30
					45 82
James' cows, 20,710, 3c.		621 30			
Dr'ft for		$4,500 00			

670 EXHIBIT 10 of T. E. Gillespie's Testimony.

K. A. B.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *June* 12, 1885.

Rappal, Sons & Co.

GENTS: We ship 15 cars cattle acc. Bowen, 1 car acc. Phalan, & one acc. James, & made draft on you for $17,500,00; will try & get you a statement in a day or two; have had a plenty to do for last week in hog yards.

Yours, &c., A. J. GILLESPIE & CO.

671 Metropolitan Hotel, Eldridge, McCoy & Co., props., cor. Fifth and May Sts.

KANSAS CITY, MO., *June* 8, 1885.

Rappal, Sons & Co., Chic.

GENTS: We this p. m. send 9 cars, 152 cattle, acc. Bowen;
1 " 20 do. acc. James;
made draft for $10,000.00; have not got any bill for the 88 James cattle that we sent you word about. Try & get us acc. sales soon.

Yours truly, A. J. GILLESPIE & CO.

Cost of Cattle.

			JUNE 12.
Acc. Phalan:			
19	cattle,	22,020, 4.82½	1,062 46
Acc. Bowen:			
15	cattle,	20,270, 5	1,013 50
3	"	3,350, 4.30	144 05
10	"	13,450, 4.80	645 60
1	"	1,400, 4¾	66 50
17	"	21,760, "	1,033 60
1	"	1,030, 4.40	43 32
24	"	30,950, 5c.	1,547 50
33	"	44,620, 5.10	2,275 62
18	"	21,030, 5c.	1,051 50
6	"	7,920, 4.75	372 24

	11 cattle, 13,860, 4.80	665	28
	1 " 1,010, 4½	45	45
	15 " 18,190, 4.85	882	21
	86 cattle, 97,400, 4.70, 10 off	4,567	80
672	16 " 22,950, 5.05	1,158	97
	2 " 3,080, 5	154	00
	259 head. Total cost	15,667	14

15 cars.

Acc. James:

22 cattle	900	00
	15,667	14
	1,062	46
	$17,629	60

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, *June* 15, 1885.

Rappal, Sons & Co.

GENTS: We ship to-night 17 cars, 329 cattle, acc. Bowen; 2 cars, 46 cattle, acc. Phalan, & 4 cars, 77 cattle, acc. James, & make draft on you for $24,000.00; hand you slip of cost of Bowen & Phalan's cattle and draw 4,000.00 on the 4 cars acc. James; they cost 4,151.34. Cattle sold to-day will do some good.

Yours, &c., A. J. GILLESPIE & CO.

673 *Cattle Shipped Acc. Bowen, June* 15, '85.

Bo't of—				
Peters & Co.	8,	8,520, 4.20	357	84
Irwin, Allen & Co.	2,	2,240, 4.70	105	28
Offull & Elmore	16,	20,860, 5	1,043	
Do.	2,	2,700, 5	135	
2, M. & Co.	200,	219,310, 4.70	10,307	57
White & H.	66,	82,150, 5.10	4,189	65
"	2,	2,440, 4½	109	80
"	4,	4,780, 4½	215	10
"	29,	35,220, 4.90	1,725	78
	329 cattle.		18,189	02

JUNE 17, '85.

Billing:

4 cars	White & Houns.		
10 "	Q., M. & Co.		
3 "	Local direct	20,074	17

Acc. Phalan:

W. & H.	8, 7,520, 4¼	319	60
G. R. B. & Co.	23, 20,970, 4½	943	65
McCoy & N.	14, 13,920, 4¼	591	60
Do.	1, 1,010, 3	30	30
Cattle,	46, 43,520	1,885	15

1 car direct.
1 " billed to Borse & Co.

Acc. James:

48 cattle,	54,620, 4.86	2,621	76
16 "	11,710, 4.55	848	12
11 "	18,640, 4¾	556	22
2 "	2,480, 5.05	125	24
		$4,151	34

3 cars J. E. Neal.
1 car direct.

65		11)11710(1064		16)18640(116	
13		11		16	
6	50				
2	50	71		26	
84		6		16	
87	00	50		104	

674 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *June* 16, 1885.

Mess. Rappal, Sons & Co.

GENTS: We ship 25 cars cattle acc. Bowen & 4 cars acc. Phalan, 1 car acc. James, & we make draft for 32,000.00 to-night. F. J. R. & others have gone to the distillery & think will load 12 cars there to-

night. Will give you statement of cattle in the morning when we see how they get loaded at the distillery.

Yours, &c., A. J. GILLESPIE & CO.

675 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., 6, 17, 1885.

Rappals & Co.

GENTS: They shipped 6 cars to you from distillery & we make draft on you to-day for $7,000.00 more on cattle sent last night; hand you statement of cost of cattle yesterday. The still cattle was divided—6 cars to you & 6 to Rosenbaum Bros. & Co. Cost of 12 cars, 216 cattle, av. wt., 1,235, $13,315.44.

Yours truly, A. J. GILLESPIE & CO.

***1235**
5
6175
216
37050
6175
12350
133,38

676 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Heading same as letters.

KANSAS CITY, MO., *June* 17, 1885.

Cost of cattle acc. Bowen & Co.:

	Cattle.	W'ts.	Price.	Am't.
	19	26,110	5.10	1,331 61
	18	21,420	4.90	1,049 58
	18	23,770	5c.	1,188 50
	18	19,660	4¾	933 85
	11	13,360	4.90	654 64
	37	41,920	4.70	1,970 24
	16	18,310	4.80	878 88
	59	76,800	5.12½	3,936
	16	19,760	4.90	968 24
17 cars.	92	127,720	5⅛	6,545 65
	4	6,170	4½	277 65
	308 cattle.			$19,734 84

* Figures printed in bold-face type in pencil in original.

Cost of cattle acc. P. Phalan:

18	cattle,	22,800, 4.95	1,128 60	
19	do.	21,120, 4.70	992 64	
2	do.	2,040, 4.60	93 84	
54	do.	62,500, 4.87½	3,046 87	
93	cattle.		5,261 95	5,261 95
				24,996 79

5 cars.
Made draft, $25,000.00.

677 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

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KANSAS CITY, MO., *June* 17, 1885.

Mess. Rappal, Sons & Co.

GENTS: Ship to-night 2 cars cattle acc't James, & will make draft to-morrow for $2,000.00.

Ship for Bowen 17 cars.

Ship "Phalan 5;" make draft for $25,000.00 on Bowen & Phalan; hand you bill of cost of same.

Yours, A. J. GILLESPIE & CO.

678 (Heading same as letters.)

KANSAS CITY, MO., *June* 16, 1885.

Cost of cattle acc. W. P. Bowen & Co.:

72	cattle,	83,760, 4.34	3,978 60
67	"	79,600, 4.90	3,900 40
50	"	68,920, 5.30	3,552 76
2	"	2,200, 5	110 00
52	"	57,100, 4¾	2,712 25
19	"	23,180, 4.90	1,135 82
15	"	20,562, 5.05 & 5	1,043 28
1	"	1,020, 4½	45 90
19	"	23,440, 4.95	1,160 28
11	"	12,930, 4.80	620 64
94	"	120,900, 5.10	6,165 90

6	cattle,	6,310, 4½	283 95
3	"	3,140, 4.70	147 58
4	"	3,960, 4½	178 20
415			
45	"	60,240, 5¼	3,162 60
2	"	2,100, 4½	94 50
462			$28,292 66

25 cars.

*Acc. Phalan:
81 cattle, 90,795 at 4.60 & 5.05, $4,369.06.

679 (Heading same as letters.)

KANSAS CITY, Mo., 6, 19, 1885.

Cost of James cattle:

18	cattle,	18,780, 4.60	863 88
2	"	2,400, 4¼	102
4	do.	4,310, 4.70	202 57
14	do.	16,420, 4.60	755 32
3	do.	2,600, 4.40	114 40
5	do.	4,340, 4.10	177 94
47	do.	43,750, 4.10	1,793 75
24	do.	19,960, 4.10	818 36
117		cost	$4,828 22

4 cattle left back here.

113 shipped in 5 cars.

GENTS: We send 13 cars to-night and make draft for $13,000.00. F. J. R. has gone down to ship cars. Stillers will telegraph you to-morrow cost & wts.

Yours truly, A. J. GILLESPIE & CO.

4,828 22
8,413 01

$13,241 23

680 (Heading same as letters.)

KANSAS CITY, *June 19th*, 1885.

8 cars acc. Bowen & Co.:

18	cattle,	20,440, 4.65	950 46
12	do.	14,020, 4.85	697 97
18	do.	21,860, 4.80	1,049 28
18	do.	20,820, 4.70	978 54

*Words and figures printed in bold-face type in pencil in original.

14	do.	15,620, 4½	702 90
2	do.	2,070, 4	82 80
20	do.	21,100, 4.60	970 60
8	do.	8,900, 4.90	436 10
8	do.	7,740, 4.40	340 56
28	do.	37,500, 4.90	1,837 50
8	do.	8,400, 4.57½	384 30
5 cattle left from Wednesday.			
159 cattle.			$8,413 01

8 cars.

***178,470.**

681 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., 6, 20, 1885.

Rappal, Sons & Co.

GENTS: We send one car, 21 cattle, acc. Phalan, cost $4.90, 24,260 5 lbs.; also 101 cattle acc. James; 16 cattle, 17,260, @ 4c., and 25 cat- 5,200 tle, 30,450, @ 4.85; 55 cattle, 62,940, @ 5c. The six cars stillers shipped last night, 108 cattle, 134,880, 5c. half, or 3 cars to you & 3 to Rosebaum Bros. & Co. Make draft for $10,000. James and Bowen has gone to ship 6 cars more stillers to-night that will go on this train, and make draft on them for $6,500.00.

Yours, &c. A. J. GILLESPIE & CO.

The balance of stillers will go to you; no more splits.

***6,744 00**
3,372 00

629 40
52 00

681 40

314,750
172,902

487,652
118,874

606,526

* Figures printed in bold-face type in pencil in original.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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682 KANSAS CITY, MO., 6, 3*rd*, 1885.

Rappal, Sons & Co., Chicago.

GENTS: We for'd 5 cars acc. Bowen & 2 cars acc. James, billed to Q., M. & Co. Made draft for $7,500.00; protect same. In your bill of June 1st, 37 cattle sold at 5.15, weighing 39,760, $2,037.64; should be $10.00 more; sold for acc. Phalan. See if we are not correct.

Yours, &c. A. J. GILLESPIE & CO.

*** Cattle to-day cost, acc. Bowen:**

15	**cattle,**	**20,420,**	**4.95**
31	**do.**	**38,150,**	**4.80**
16	**do.**	**18,300,**	**4.70**
5	**do.**	**5,870,**	**4.70**
2		**3,020,**	**5**
2		**2,340,**	**4½**
1		**1,350,**	**4.80**
72			**$4,299.08**

Acc. James:

31	**cattle,**	**41,370,**	**4.90**
5	**do.**	**6,730,**	**4.85**
36			**$2,353.53**

Load of big cattle cost 5.15—17 head.

683 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

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KANSAS CITY, MO., *June* 4, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: Send you one car cattle ac. James & 10 cars, 174 cattle, ac. Bowen. Make draft for $12,500.00 on the lot. The 156 Colo-

* Words and figures printed in bold-face type in pencil in original.

rados sent to-day cost 4.90, & I think you will have some hard work to get them to pay out.

Yours, &c., A. J. GILLESPIE & CO.
T. E. G.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

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KANSAS CITY, MO., 6, 22, 188–.

Rappal, Sons & Co.

GENTS: Ship 3 cars to-night ac. Phalan. There was a very light run here to-day. Made draft for $3,000.00. Cattle cost: 55 cattle, 63,420, @ 4.85, $3,075.87.

Yours, &c., A. J. GILLESPIE & CO.

Stillers shipped Saturday night 108 cattle, 132,484, @ 5c., $6,624.24.

*** 540; ave., 1,134.** **1,227.**

684 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

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KANSAS CITY, MO., 6, 23, 1885.

Rappal, Sons & Co.

GENTS: We ship to-night 14 cars, as per list enclosed; also will ship 6 cars from still; will send wts. to-morrow. Make draft to-night for $16,000.00, & will get off balance to-morrow & make draft on them.

Yours, &c., A. J. G. & CO.

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A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

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KANSAS CITY, Mo., *June 23rd*, 1885.

Cattle bought for ac. Bowen & Co.:

20	cattle,	20,600, 4.80	988 80	
18	"	17,710, 4.60	814 66	
20	"	22,160, 5c.	1,108 00	
34	"	48,060, 5.35	2,571 21	
19	"	23,200, 5.05	1,171 60	
9	"	9,600, 4.85	465 60	
34	"	45,040, 5.30	2,387 12	
154	cattle.		$9,506 99	

2 left back.
8 cars.

685 1 car acc. Phalan:

21	cattle,	25,100, 5.05	1,267 55	

1 left back.

2 cars acc. James:

42	cattle,	4,300, 4.60	1,978 00	

3 cars to-night ac. Bowen & Phalan:

35	cattle,	47,230, 5.20	2,455 96	
42	"	54,060, 5.17½	2,797 60	*1349 1287
1	"	1,510, 4c.	60 40	
23	"	30,900, 5.15	1,591 35	
101			6,905 31	

53 shipped; balance left.

48 will be shipped to morrow.

Draft to-day for $16,000.00

* Figures printed in bold-face type in pencil in original.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

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KANSAS CITY, Mo., 6; 24, 1885.

Rappal, Sons, & Co.

GENTS: We ship or forward 2 cars cattle that Bowen bought at Paola; 1 car, 17 cattle, that was bought here; also for'd the 3 cars that was left back of Bowen's & Phalan's; put in 6 more cattle; made draft on 6 cars stillers shipped last night for $6,500, & on cattle to-day & yesterday for $9,000.00. The weather to-day and yesterday — very bad; rained all day. James thinks you give his cattle away yesterday at 3½.

Yours, &c., A. J. GILLESPIE & CO.

686 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

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KANSAS CITY, Mo., 6, 24*th*, 1885.

Cattle bought acc. Bowen.
Stillers sent yesterday.

108 cattle, 131,463, 5c.			6,573 10
Cattle from Paola:			
36 cattle, 4.95			2,356 64
Here 14 "	19,650, 5.40		1,061 10
1 "	1,130, 5c.		56 50
4 "	4,300, 4¼		182 75
16 "	19,850, 5⅛		1,017 31
			$4,674 30

Bill last night acc. Phalan & Bowen:

101 cattle,		6,905 31
6 "	7,420, 5⅛	380 18
107		7,285 49
53 ship- yesterday.		
54 " to-day.		

687 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, Mo., 6, 25, 1885.

Rappal, Sons & Co., Chicago, Ills.

D'R SIR: We ship you to-night 5 cars cattle; 2 cars acc. James, 40 cattle, cost 5.12½; one car acc. Phalan, 21 cattle, @ 5c.; Bowen's, 2 cars, 40 cattle, @ 5c. We make draft to-day for $6,000.00. F. J. R. & James went to Leavenworth to-day to buy the Glucose cattle.

Yours, &c., A. J. GILLESPIE & CO.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, Mo., *June* 26, 1885.

Rappal, Sons & Co., Chicago.

GENTS: We ship from here 13 cars for Bowen & Co., as per statement, & 4 cars acc. Phalan; make draft for $20,000,00 on same. They will load at the still the balance—think about 8 cars; will give weights to-worrow. They closed trade to-day for 1,900 cattle at the Leavenworth Glucose Works & think will commence shipping at once.

Yours truly, A. J. GILLESPIE & CO.

688 Metropolitan Hotel, Eldridge, McCoy & Co., props., cor Fifth and May Sts.

KANSAS CITY, Mo., *June* 26, 1885.

Messrs. R. & Sons.

GENTS: The last 8 cars stillers went last night. Do the best you can on them. We think they are best by 25 cts. per hundred. We bought the Glu*ecast* cattle at Leavenworth, 5 cts., & keep us well posted; 20 cars of them to-day. Let us know how the runs *is* as well as you can.

A. J. GILLESPIE.

689 K. C., *June* 26, 1885.

Bought for W. P. Bowen, G. & Co.'s Ac.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
Alexander	42	50,830	5.40	*1,210		2,744	82
"	32	39,720	"	1,241		2,144	88
"	1	900	4.75			42	75
"	1	800	"			38	00
A. C. Shinkle	15	19,060	5.40	1,270		1,029	24
"	1	1,000	4.75			47	50
A. C. Morrison	29	36,230	5.35	1,249		1,938	30
"	3	3,000	4.75			142	50
"	36	45,000	5.35	1,250		2,407	50
Peters & Co.	1	1,010	4½			42	92
Mountjoy, M. & Co.	20	21,760	4.85	1,088		1,055	36
McCoy & W.	1	1,440	5c.			72	00
Do.	15	18,730	5.30	1,248		992	69
Do.	20	24,210	5.35	1,210		1,295	23
Campbell, L. & Co.	17	22,800	5.50	1,341		1,254	00
Do.	2	2,040	5.00			102	00
Stoler & Co.	2	2,200	5.00			110	00
	238	cattle.				$15,459	69

13 cars.

Yours, &c., A. G. GILLESPIE & CO.

690 KANSAS CITY.

Bought for P. Phalan, June 26, 1885.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
Wood Bros.	22	25,680	4.85	*1,176 #		1,245	48
Stoler & Co.	35	44,020	5.30	1,257		2,333	06
Do.	18	22,920	5.40	1,273		1,237	68
	75					4,816	22

4 cars.

Yours, &c., A. J. GILLESPIE & CO.

*** Billed direct.**

*Words and figures printed in bold-face type in pencil in original.

691 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., 6, 27, 1885.

Rappal, Sons & Co., Chicago, Ills.

D'R SIR: We ship to-night 205 cattle acc. Bowen, as per statement; 120 cattle acc. Phalan; made draft on the 2 lots for $20,500.00. Give you wts. of stillers that went last night, & made a draft to-day on them for $9,300.00; could not get cars at 11worth to-day; will try & get a train out Monday.

Yours, &c., A. J. GILLESPIE & CO.

692 *Phalan, June* 27, 1885.

Seller.	No.	Weight.	Price.	Block.	Pen.
G. & Co., acc. C. & S.	17	20,480	5⅛	1,049	60
G. & S., "	1	1,470	4.00	58	80
G. & S.	22	24,160	4.90	1,183	84
"	38	47,650	5¼	2,501	62
G. & Co.	39	41,100	4¾	1,952	25
"	1	1,260	3½	44	10
"	2	2,100	4.00	84	00
	120			6,874	21

Acc. W. P. Bowen, June 27th, 1885.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
A. J. Snyder & Co.	65	90,960	5.60	***1,297**		5,093	76
"	2	2,510	5.00			125	50
McCoy	21	21,100	4.70			991	70
"	2	2,090	4.70			98	23
Gregory & S.	53	60,530	5.15			3,117	29
S. & N. G. & Co.	36	44,060	5.35	**1,223**		2,357	21
" "	3	3,160	4.95			150	10
English & Co.	15	20,600	5 62½	**1,373**		1,158	75
"	3	3,140	5.00			157	00
C. L. & Co.	5	5,990	5.20			311	48
	205	254,140				$13,561	02

13 cars, 11 O K

* Figures printed in bold-face type in pencil in original.

146 *Cattle Acc. Bowen, June* 26, 1885. *Stillers.*

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
A. Myers	145	185,213	5c.			9,260	65
	1	1,305	3½			45	67
	146					$9,306	32

8 cars.

D'ft for 9,300.00.

693 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *June* 29, 1885.

Mess. Rappal, S. & Co., Chicago, Ills.

GENTS: We ship 10 cars to-night acc. Bowen & make draft for $13,000.00. Enclosed find bill of cost & wts. F. J. R. & A. J. G. went to Leavenworth this morning & expect to ship a train from there to-night, & Phalan will ship a few from Liberty, Mo.; think 4 cars.

I won't say any more about the James cattle, & would not have mentioned it if — had known some one else had been harping on it. Will wait until Phalan comes in, & let him harp on his. The first words will be, Oh! my God, Tom, not so bad. He was told here. After he bought them he did not think so.

Yours, &c., A. J. G. & CO.
T. E. G.

694 Planters' House, J. B. Lamber, proprietor.

LEAVENWORTH, KANSAS, *June* 29, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We ship from here twenty cars of good cattle—384 head; weight, 448,024 lbs.; you keep them in two five-car bunches and one ten-car bunch. These are good cattle, and Mr. Fred. Rappal says for you to try and get 5.90 for them. We think we will ship twenty cars to-morrow. There is draft to-night for $22,401.20.

Yours truly, A. J. GILLESPIE & CO.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 6, 30, 1885.

Rappal, S. & Co., Chicago.

GENTS: We ship 9 cars acc. Bowen to-night, & hand you bill of cost; make draft for $10,000.00. Phalan shipped 3 cars, 54 cattle, from Liberty last night, & we make draft to-day for $3,000.00; 54 cattle, 62,010, @ 4.85.

Yours, &c., A. J. G. & CO.

***62,010**
4.85

310050
496080
248040

3,007.48
3,139

139

695 *Bought Ac. Bowen & Co., June* 29, 1885.

196 cattle.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
Benney & Co.	49	54,000	5.15	***1,102 #**		2,781	00
McCoy & Co.	34	42,780	5.4	**1,258 #**		2,352	90
Do.	18	22,330	5.40	**1,240 #**		1,205	82
Metcalf, M. Co.	51	70,200	5.50	**1,376 #**		3,861	
Do.	3	330	5.40	**1,110**		153	18
Campbell, L. & Co.	41	51,180	5.35	**1,248**		2,738	13
	196					13,092	03

* Figures printed in bold-face type in pencil in original.

Ac. Bowen, June 30th, 1885.

9 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
G. & S.	14	15,600	5			780	
"	2	1,770	4½			79	65
J. F. G. & Co.	31	35,750	5.10			1,823	25
M. W. & Co.	1	1,300	4.60			59	80
McCoy & N.	20	25,180	5.40			1,359	72
M. M. & Co.	1	1,090	4.40			47	96
Borse & Co.	34	44,820	5.35			2,397	87
"	2	2,090	4½			94	05
"	17	23,270	5.35			1,244	94
Stoler & Co.	21	23,260	5			1,163	00
"	5	5,340	4.70			250	98
"	2	2,590	5			129	50
"	1	1,170	4½			52	65
M. & Son	8	8,660	4.80			415	68
A. J. S. & Co.	3	3,810	4.70			179	07
	11	that was	left yesterday.				
	173	cattle, 9	cars.			10,078	12

696 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *July 1st,* 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We hand you bills of cattle bought to-day, & make draft for $18,800.00 on same.

Yours, &c., A. J. GILLESPIE & CO.

Acc. P. Phalan, July 1st, 1885.

5 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
G. Reed & Co.	79	116,160	5.50			6,388 ***6,160** **228**	80

* Figures printed in bold-face type in pencil in original.

Acc. W. P. Bowen, July 1st, 1885.

183 cattle, 10 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
O. & E.	40	50,850	5.40			2,745	90
"	52	69,240	5.42½			3,756	26
"	17	19,070	5.20			991	64
"	17	21,070	5.20			1,095	64
"	39	48,480	5.40			2,617	92
McCoy & Co.	11	13,730	5.30			727	69
"	2	2,870	5.30			152	11
"	3	3,700	4.90			181	30
G. & Co.	2	2,450	5c.			122	50
	183		18,1,203,@5.20.			$12,390	96

697 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., 7, 13, 1885.

Rappal, Sons & Co., Chicago Ills.

GENTS: We for'd 18 cars to-night acc. Bowen and one acc. James. Market very hard here. They think they got these cattle low down. We made draft to-day for 16,500.00 & one for $6,000.00, making 22,500.00 on the 19 cars; think will have your statement done by to-morrow.

Yours, &c., A. J. GILLESPIE & CO.

*** James' cattle cost 4.85.**

* Words and figures printed in bold-face type in pencil in original.

698 *W. P. Bowen, July 3d,* 1885.

18 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
Q., M. & Co.	39	46,990	5.10			2,396	49
"	37	43,390	"			2,212	89
"	21	24,780	5.10			1,263	78
Snider & Co.	63	77,630	5.15			3,997	95
G. & Co.	18	24,320	5¼			1,276	80
McG. & N.	36	44,440	5.05*			2,234	22
"	2	2,510	4¾			119	23
G. & Co.	18	20,530	4.80			985	44
Wood Bros.	2	2,110	4.40			92	84
R. & R.	8	9,520	4.85			461	72
"	2	1,950	4.35			84	82
"	66	85,140	5.20			4,427	28
"	2	2,350	4½			105	75
"	15	19,130	5			956	50
Borse & Co.	14	15,860	4.85			766	30
	343	19				21,382	01

*10 off.

699 Planters' House, J. B. Lamber, proprietor, Leavenworth, Kansas.

7, 5, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We ship from here to-night 20 cars cattle, 379 head, 435,026 lbs.—draft $21,751.30; will ship twenty cars more to-morrow if we can get cars. Mr. Fred. Rappal says to cut out two or three cars of the biggest cattle to sell separate. He also gave instructions to shipper, and he will tell you.

#1147.*

Yours truly, A. J. GILLESPIE & CO.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 7, 6, 1885.

Rappal, Sons & Co., Chicago.

GENTS: Hand you statement of acc. & add on the last two lots of June that was sold on July 2 & 3—173 cattle & 185 cattle—clearing

* Figures printed in bold-face type in pencil in original.

up all cattle here. In your bill of 173 cattle, sold July 3d, there is & error on the 36c.; 46,970, 5.40, should be $2,536.38. You have it $2,436.38. We change your bill & make the nett 100 more. We make draft to-day for $2,500.00; shipped yesterday 20 cars from Leavenworth, & will ship a train to-day. There is but few cattle here to-day, & have not got anything yet, only part of a load.

Hoping you will find this all correct, we remain yours, &c.,

A. J. GILLESPIE & CO.

Part of statement in another letter.*

700 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 7, 6, 1885.

Rappal, Sons & Co., Chicago.

GENTS: We ship via C. & A. one car, 22 cattle, acc. Bowen. He could not get any good cattle, & he thought he would try a load of big cattle. They weigh 907, at 3½. We make draft on same for 600.00.

Yours, &c., A. J. GILLESPIE & CO.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., 7, 17, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We ship 10 cars acc. Bowen, & give shipper orders to get there Thursday. Hand you bill of cost of same, & make draft for $12,000.00. F. J. R. & Jno. G. will get out the last of Gluecos- cattle to-day.

Yours truly, A. J. GILLESPIE & CO.

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*38)49670(1307
   38
   ---
   116
   114
   ---
    270
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* Words and figures printed in bold-face type in pencil in original.

701 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 7, 8, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you 7 cars to-night and make draft on same for $8,000.00; hand you statement of same. We made draft to-day for $10,000.00 on cattle shipped from Leavenworth. They deducted that am't from their draft yesterday. Boys here to-day are a little blue; market to- bad.

Yours, &c., A. J. GILLESPIE & CO.

W. P. Bowen, July 8, 1885.

7 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
Oyster, Jr.	71	96,265	5¼ & $2.00	--		5,055	91
Campbell	11	13,080	4.90			640	92
McCoy	34	44,000	5.10			2,244	00
"	1	1,160	4½			52	20
	117					$7,993	03
	10 left from yesterday.					*500	
	128 cattle, 7 cars.					**8,493**	

* Figures printed in bold-face type in pencil in original.

702 *W. P. Bowen, July 10th, 1885.*

12 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
J. R. Stoler & Co.	3	3,920	4.90			192	08
Irwin & Co.	13	18,400	5¼			965	00
Borse & Co.	22	27,040	4.90			1,324	96
Metcalf & M. Co.	2	3,370	5.60			188	72
"	5	6,510	5			325	50
McFarland	21	19,690	4.40			866	36
"	2	2,070	4.30			89	01
G. & T.	42	43,420	4.65			2,019	03
"	22	22,370	4½			1,006	65
Keys & Co.	19	21,430	4½			964	35
"	4	4,550	4.35			197	92
Means & Son	18	21,430	4¾			1,017	97
V. & H.	6	6,780	4.80			325	44
"	4	4,650	4¼			197	62
"	2	2,080	"			88	40
M. & Son	14	15,160	4½			682	20
Wood & Bro.	35	40,000	4.85			1,940	
C., L. & Co.	1	960	4.65			44	64
	235	cattle.				12,436	80
		263,830					
		261,080					
		235) 2,750(11¾					

703 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., 7, 10, 1885.

Mess. Rappal, Sons & Co.

GENTS: We send you 12 cars acc. Bowen and 7 cars acc. James to-night; hand you bill of Bowen's; make draft for 18,000.00 on the 19 cars. James has sorted his cattle here & sold out 30 head here; draft on James, 7 cars, $5,500.00.

Yours, &c., A. J. GILLESPIE & CO.

The 4 cars acc. James cost 4.60, & bulls 2c., cows 2½.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

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KANSAS CITY, Mo., 7, 11, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you 3 cars, 72 cows, acc. James that he picked up. They cost about 2.45. He thinks they ought to make more than good cattle. Give us net in telegram. We make draft for $1,500.00. Please honor.

Yours, &c., A. J. GILLESPIE & CO.

704 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, Mo., 7, 13*th*, 1885.

Rappal, Sons & Co.

GENTS: We hand you cost & order for 3 cars. The shipper went off & did not get order. We make draft for $2,200.00 on same; the run of cattle here to-day light.

Yours &c., A. J. GILLESPIE & CO.

W. P. Bowen, July 13th, 1885.

3 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
A. J. Snider	58	59,620	3.70	----	------	2,205	94
Do.	5	4,260	3c.	----	------	127	80
	63					2,333	74

89

58)59620(1028
58

162
116

460
464
---

705 *W. P. Bowen & Co., July* 14, 1885.

22 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
Caton	57	66,530	5.10	------	------	3,393	03
"	75	87,300	5.15	------	------	4,495	95
"	54	70,470	5¼	------	------	3,699	67
G. & Co.	16	20,730	5.20	------	------	1,077	96
"	2	2,940	5	------	------	147	00
M., M. & Co.	14	16,790	4.90	------	------	822	71
"	107	127,630	4 90	------	------	6,253	87
"	55	7,140	5	------	------	3,557	00
"	18	22,480	5.20	------	------	1,168	96
	*18)398(22					24,616	15
	36						
	38						
	32						
	2						

486,010
354

*Figures printed in bold-face type in pencil in original.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., 7, 14, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: We ship to-night 22 cars cattle via Hannibal R. R. and make draft for $24,500.00. They cost as per bill enclosed. Hoping they will strike a good market, we remain,

Yours truly, A. J. GILLESPIE & CO.

706 *W. P. Bowen, July* 15, 1885.

5 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
McCoy & N.	3	3,500	5	------	------	175	00
"	17	21,980	5¼	------	------	1,153	95
Jones Bros.	16	19,680	4.60	------	------	962	08
"	1	1,420	4c.				
W. & Holmes	57	66,020	4.80	------	------	3,168	96
	94	112,600				5,459	99
		94)110410(23					
		***2190**					
		188					
		310					

Draft made for $5,500.00.

*Figures printed in bold-face type in pencil in original.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, Mo., *July* 15, 1885.

Rappal, Sons & Co., Union Y'ds.

GENTS: The car bulls sold on Monday for James. Please send us bill of them separate from other cattle. James sold them after leaving here to F. J. R., Sr. Let us have same soon as convenient & oblige; shipped 5 cars to-night.

Yours, &c., A. J. GILLESPIE & CO.

707 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *July* 17, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We ship 7 cars acc. Bowen & 1 acc. James; make draft on same for $8,000.00. We also ship 2 cars, 40 cattle, acc. Manion, & make draft for costs of same, & he said you would charge to him fr't, 2,078.09, acc. Manion.

Yours, &c., A. J. GILLESPIE & CO.

C. G. Manion bought July 17th:

4 cattle, 4,400, 4½		198 00
34 " 37,980, 4.65		1,766 07
2 " 2,370, 4.60 & 2		111 02
40		$2,075 09
Exc.	(2,154.25)	3
		$2,078 09

Made draft for above am't; charge to Manion.

708 *W. P. Bowen & Co., July* 17, 1885.

7 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
G. & Co.	14	15,930	4.35			692	95
	18	23,230	5			1,161	50
	11	13,560	4.90			664	44
	22	@ 23c.	each.			506	00
	5	5,660	4.90			277	00
	1	1,360	"			66	64
	1	1,210	"			59	29
	1	990	4			39	60
	20	22,650	4.40			996	62
	4	5,460	5¼			286	65
	2	2,480	4.35			107	88
	8	8,780	4.35			381	93
	18	22,820	4.90			1,118	18
	21	19,300	2.65			511	45
	146					$6,870	47

709 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., 7, 18, 1885.

Rappal, Sons & Co., Union Yards.

D'R SIRS: We send to-night acc. Bowen 164 cattle & hand bill of same; also send you 2 cars of steers for James—50 head. They are good, fat little steers & have had plenty corn, & cost 3.15; want you to get a big price if possible. We make draft on you for $7,400.00.

Yours, &c., A. J. GILLESPIE & CO.

Postal Card U. S.

(Kansas City, Mo., 1885.) (U. S. postage, one cent.)

Nothing but the address can be placed on this side.

K. C., *July* 18.

Mess. Rappal, Sons & Co., Union Yards, Chicago, Ills.

GENTS: In your bill of 16th for 218 cattle there is an error of 2.02.

18 cattle, 22,830, at 5.45, should be $1,244.23 & not $1,242.21. We charge you with 2.02 more. Please correct same & oblige—

Yours, &c., A. J. GILLESPIE & CO.

218 cattle acc. Bowen.

710 *W. P. Bowen, July* 18, 1885.

7 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
	2	left from	yester-	day.			
G. & S.	1	880	2c			17	60
"	41	29,750	2½			743	75
"	2	1,920	2.80			53	76
"	6	4,880	2.60			126	88
"	78	87,980	5.10			4,486	98
Barse	9	7,720	2½			193	00
McCoy & N.	2	2,000	3¼			65	00
W. & H.	23	15,470	2.60			402	22
	164					$6,089 *120	19

2 left over.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *July* 20, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you 4 cars cattle acc. Bowen and send orders by shipper, marked acc. Bowen; 8 cars acc. James. Make draft on same for $8,000.00.

Yours truly, A. J. GILLESPIE & CO.

102292
975310

26982

*Words and figures printed in bold-face type in pencil in original.

711 Cost of cattle, July 20th, '85, acc. Bowen & Co.: 932.

44	cattle,	40,750, 3.65	1,487 38
46	"	43,150, 3.65	1,574 97
90		Total cost	$3,062 35

4 cars, Gillespie.

910 @ 3.20.

James' cattle cost as follows:

11	cattle,	9,600, 3.20	307 20
49	do.	44,050, 3.20	1,409 60
47	do.	44,450, 3.65	1,622 42
85	do.	75,850, 2.75	2,085 87
191		173,950	$5,425 09
			5,251
			174
			147
			221

8 cars.

712 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, *July* 2, 1885.

Rappal, Sons & Co., Union Yards, Chicago, Ills.

GENTS: We ship you 4 cars cattle from here, & 6 cars that was billed from Paola, Ks., acc. Bowen; we made draft on cattle from Paola for $6,650.00 & 4,300 on cattle from here. We send 38 cattle of James that cost 4.90, & make draft on them for $2,300.00. Give shipper orders to make Thursday's market.

Yours truly, A. J. GILLESPIE & CO.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 7, 22, 1885.

Rappal, Sons & Co., Chicago.

GENTS: We hand you cost of 14 cars—2 acc. Bowen & 12 acc. James, and make draft for 8,500.00 on same, & order cattle for Friday's market. We also send you 101 cattle acc. Eureka Bank, acc. R. K. C., & make draft on same for $5,000.00. Mr. Conwell goes with cattle, but you make returns to us.

Yours truly, A. J. GILLESPIE & CO.

713 *James, July* 22, 1885.

12 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
853 #	144	122.960	2.90			3,565	84
Keep these seperate & send bill seperate ; billed Barse & Co.							
	1	1,240	2c.				
	24	16,860	2½		702 #		
	18	21,490	4.40		1,193 #		
	55	31,360	2.30		570 #		
	1	630	"				
	24	19,030	2.90		792 #		
	21 & 4 calves	19,100	2.80		914		
	2	2,210	4.40 & $2			$3,115	08

Acc. Bowen & Co., July, 1885.

2 cars.

Seller.	No.	Weight.	Price.	Div.	Scale.	Block.	Pen.
	14	15,550	4.70			730	85
	7	8,900	5c.			445	00
	14	18,390	4.72½			868	92
	1	1,300	3.90			50	70
	1	left from	yesterday.				
	37					2,095	47

Ave., 1,226, @ 4.74.

714 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., 7, 23, 1885.

Mess. Rappal, Sons & Co.

GENTS: We send you 10 cars acc. James, 233 cattle; make draft for $6,000.00.

Yours, &c., A. J. GILLESPIE & CO.

James' cattle cost—134:

134	cat.,	122,280,	@ 3¼	
3	"	2,760,	2c.	
56	"	51,780,	3½	
33	"	30,850,	3½	
1	"	1,050,	3¼	
1	"	1,090,	3¼	
1	"	1,830,	3¼	
4	"	3,010,	3c.	
233		214,650		$6,935 06
				*6.041

*233)214650(921
2097
0495
466
290

Average, 921.

715 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *July* 24, 1885.

Bowen bought to-day:

17	cattle,	24,180,	@ 5.10	$1,233 18
1	"	1,410,	4.75	66 97
59	"	66,090,	4c.	2,643 60
140	"	140,540,	3.40, & 10 off	4,768 36
160	"	162,430,	3½	5,685 05

* Figures printed in bold-face type in pencil in original.

53	cattle,	52,100, @ 3.15		$1,641 15
106	"	102,550,	3	3,076 50
1	"	1,200,	4.85	58 20
1	"	1,080,	2¾	29 70
6	"	5,700,	3.20	182 40
18	"	19,590,	4½	881 55
1	"	1,340,	4	53 60
563				$20,320 26

26 cars.

716 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

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KANSAS CITY, MO., 7, 24, 1885.

Acc. James:

26	cattle,	22,970, 2.85		654 64
19	"	17,000, 2.75		467 50
20	"	23,380, 4.60		1,075 48
75	"	75,380, 3.20, 10 off		2,402 16
3	"	2,580, 2.90		74 82
1	"			
144	Have not got wt.			4,674 60
6	sold here.			
138				

6 cars.

GENTS: Yours to hand. We try to get our mail off on to-night's train, so you get — in morning. We send you 32 cars to-night & make draft for $24,000.00. We charge your acc. with $516.37 that you want to charge to P. Phalan, and we send him a statement of same.

Yours, &c., A. J. G. & CO.

717 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie, live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 7, 25, 1885.

Mess. Rappal, Sons & Co., Chi.

GENTS: We send you 4 cars acc. Bowen—77 cattle; make draft 3,500.00; hand you bill of cost of same; think F. J. R. will go home to-night.

Yours, &c., A. J. GILLESPIE & CO.

Cost of 4 cars acc. Bowen:

1	cattle,	1,070, @ 4c.		42 80
18	"	23,550, 5c.		1,177 50
19	"	22,930, 5c.		1,146 50
13	"	13,710, 4½		616 95
9	"	11,360, 4.80		545 28
17	"	16,940, 3.65		618 31
77				$4,147 34

718 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *July* 27, 1885.

Acc. Bowen & R.:

Natives,	14	cattle, 16,570, 4¼,	**#1,183***	704 22
"	18	25,300, 5.15,	**1,404**	1,302 95
"	18	23,310, "	**1,295**	1,200 46
"	3	3,560, 4¼,	**1,186**	151 30
	53			$3,358 93

3 cars.

25 cars; keep separate & send bill separate.

* Figures printed in bold-face type in pencil in original.

Texas, 561	cattle, 499,050, 3c.		14,971 50	
" 9	7,800, 2½		195 00	*891
" 2	1,780, 2½		44 50	866
" 2	2,050, 2.90		59 45	890
" 1	1,620, 1.75		28 35	1,025
				1,620
575	*51,230		15,298 80	
Back charge			1,022	
Cost			$14,276 80	

719 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, Mo., —— —, 188–.

Rappal, Sons & Co.

GENTS: We ship 28 cars acc. Bowen, 3 cars natives & 25 cars Texas. We give you bill of same & make draft for $17,500.00. James has ½ interest in Texas. Keep them separate.

Yours truly, A. J. GILLESPIE & CO.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, Mo., *July* 28, 1885.

Rappal, Sons & Co., Chicago.

GENTS: We send you 8 cars via C. & A. acc. James to-day and make draft for $4,500.00.

Yours, &c., A. J. GILLESPIE & CO.

Cost of cattle:

56	cattle, 40,440, 2¾		1,112 10	*722
113	" 90,840, 2.85		2,588 94	803
18	" 23,340, 4.40		102 96	1,296
8 cars			$4,728 00	

* Figures printed in bold-face type in pencil in original.

720 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *July* 30, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We ship 11 cars to you to-night, 9 cars acc. Bowen & 2 acc. James. I want you to get a good price for James' stag. They cost 3c. here & weigh 1,060. We make draft for $11,000.00; hand you bill of cost of Bowen's; think he has 8 or 10 cattle left back that he did not ship.

Yours truly, A. J. GILLESPIE & CO.

Cost of cattle:

60	cattle,	81,990, @	4¾	3,894 52
37	"	43,280, "	4.30	1,861 04
37	"	43,080, "	"	1,852 44
38	"	47,640, "	"	2,048 52
172	cattle, cost			$9,656 52

Send pass for Rappal, Sr., to-night.

721 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Aug.* 1*st*, 1885.

Rappal, Sons and Co., Chicago.

GENTS: We ship you one car cattle acc. Bowen and make draft on same for $600.00. There was only 3 or 4 cars cattle here to-day.

Yours, &c., A. J. GILLESPIE & CO.

Cost of cattle acc. Bowen:

5	cattle,	5,740,	4½	258 30
6	"	6,540,	4½	294 30
9	"	9,680,	4¼	411 40
20				$964 00

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Aug.* 3*d*, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: Your bill of July 30th, acc. James, of 187 cattle—there is an error of $10.00. In figuring 117 cattle, 89,530, @ 3¼, 2,899.72 should be $2,909.72. Please make correction, & we charge you with 10.00 more.

Yours, &c., A. J. GILLESPIE & CO.

722 EXHIBIT 11 of T. E. Gillespie's Testimony.

K. A. B.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Aug. 4th*, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We ship 4 cars, 72 cattle, acc. Bowen & make draft for $4,400. We look for F. J. R., Sr., here to-night.

Yours, &c., A. J. GILLESPIE & CO.

Cost of cattle:

1	cattle,	1,020,	4¼	43 35
34	"	43,100,	4.80	2,068 80
1	"	960,	4¼	40 80
35	"	45,270,	4.80	2,172 96
1	"	1,130,	4.40	49 72
72				$4,375 63

723 *Postal Card U. S.*

(Kansas City, Mo. Chicago, Ill., S. Y., Aug. 6, 7 a. m.) (U. S. postage, one cent.)

Nothing but the address can be placed on this side.

KANSAS CITY, *Aug.* 4.

Rappai, Sons & Co., Chicago, Ills.

GENTS: We have not got bills of cattle that you sold Saturday.

Yours, &c., A. J. GILLESPIE & CO.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co, live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Aug.* 5, 1885.

Cattle paid for acc. Bowen & R.:

M., M. & Co.,	34	cattle,	39,500,	@ 4¼	1,678 75
Mc.C. & N.,	43	"	42,650,	3¾, 10 off	1,376 12
Barse & Co.,	17	do.	20,900,	4.65	971 85
"	17	do.	23,600,	5¼	1,239 00
Stoler & Co.,	6	do.	6,970,	4¼	296 22
Barset & Co.,	1	do.	740,	2¾	20 35
6 cars,	118	cattle			5,582 29
Exchange					2 75
					5,585 04
Followed fr't off					77 60
2 drafts					$5,507 44

D'ft, 5,240 68
" 266 26

5,507 44

724 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Aug. 5th*, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We ship for Bowen & R. 6 cars & hand you bill & make draft for same. We also send you one car acc't James, 21 cattle, *acc. James* & make draft for $1,000.00 on them. They are a good load cattle, & you want to make a good sale, as James' cattle have not been doing very good.

Yours, &c., A. J. G. & CO.

725 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Aug.* 7, 1885.

Cattle paid for acc. Bowen & R.:

G. & Co.,	1	cattle,	1,330,	at 2.25	29 92
"	1	"	1,110,	2	22 20
Q., M. & Co.,	16	"	19,560,	4½	880 20
" "	2	"	1,820,	4	72 80
M., M. & Co.,	12	"	12,180,	4.20	511 56
"	34	"	47,270,	1¾	827 22
Stoller,	20	"	26,170,	5	1,308 50
"	17	"	19,670,	4¾	934 32
"	1	"	1,670,	4½	75 15
R. & R.,	99	"	103,820,	4.60	4,775 72
M., M. & Co.,	14	"	17,720,	4.65	823 98
"	1	"	1,170,	4.60	53 82
Lobe,	7	"	7,880,	4	315 20
W. H. Slater,	89	"	111,190,	4.85	5,392 71
	314				$16,023 30

17 cars.

53—1004

Cash paid Bowen	20	
" " shipper	12	
Exchange	7 95	
		39 95
		16,063 25
Rebate freight		195 00
Draft, $15,868.25		15,868 25

726 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., 8, 11, 1885.

Rappal, Sons & Co., Chicago.

GENTS: We for'd 3 cars cattle that Mr. Bowen bought at St. Mary's and he made draft on us for same, & we draw on you for cost of cattle, $3,243.00. Please protect same & oblige us.

Yours, &c., A. J. GILLESPIE & CO.

727 —— ——, live stock commission merchants, room 15 Exchange building.

KANSAS CITY, MO., *Aug.* 12, 1885.

Paid for W. P. Bowen & Co.

Bo't of—	Cattle.	Hogs.	Sheep.	Weight.	Shrinkage.	Price.		
R. & R.	1			1,270		3.40	43 18	
W. & H.	1			1,360		4c.	54 40	
"	1			1,070		3c.	32 10	
Q., M. & Co.	21			17,980		3.40	611 32	
"	20			19,820		3.87½	768 02	
J. F. G. & Co.	28			34,150		4¾	1,622 12	
"	4			4,150		4¼	176 37	
McC. & N.	49			56,200	$15.00 off.	4½	2,514 00	
G. & Co.	16			19,320		4.60	888 72	
"	3			2,950		4c.	118 00	
Stoller	14			16,640		4.65	773 76	
	158							7,601 99
	8 cars.							
	180	Texas		133,030		2.85	3,791 35	
	74	"		50,070		2.30	1,151 61	
	254							4,942 96
	10 cars.							12,544 95
				Freight	followed	388		
						58		
								446
								12,098 95
							Exchange	9 00
							Draft for	12,109 95

E. & O. E.

*** Sell cattle billed from Snider separate & send bill separate.**

* Words printed in bold-face type in pencil in original.

728 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *Aug.* 12*th*, 1885.

Mess. Rappal, Sons & Co., Union Yards.

GENTS: We paid for 18 cattle and for'd to you to-night. Send you bill & scale ticket. Make draft for cost, $12,108.95. The Texas, billed from A. J. S. & Co., make bill separate, and there is some other interested. Yours to hand in regard to the bulls, and the scale books here is as we give you the ticket; we have party looking it up.

Yours, &c. A. J. GILLESPIE & CO.

729 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *Aug.* 13*th*, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We ship you one car, 25 cattle, acc. James, and make draft on same for $600.00. Please protect same. We also send you bill for 14 cars acc. Bowen & Co., and make draft for same, 11,710.03, as per bill. F. J. R., Sr., requested me to tell you that he collected $40.00 last week, rebate freight, and to charge him with it & cr. Bowen & Co.

Yours, &c., A. J. GILLESPIE & CO.

730 A. J. Gillespie & Co., live stock commission merchants, room 15 Exchange building.

KANSAS CITY, Mo., *Aug.* 13, 1885.

Paid for W. P. Bowen & Co.

Cattle.	Hogs.	Sheep.	Weight.	Shrinkage.	Price.		
32			44,000		4.90	2,156 00	
2			2,420		4¼	102 85	
4			4,440		4c.	177 60	
3			3,270		4c.	130 80	
1			920		3.75	34 50	
16			17,060		3¾	639 75	
13			14,240		4	569 60	
19			22,960		4.45	1,021 72	
34			45,070		4.80	2,162 40	
3			3,195		4.10	130 99	
1			1,065		4	42 60	
145			132,880		3.40	4,517 92	
5			5,080		2	101 60	
4			5,340		3½	116 90	
							11,905 23
282	cattle.						
Freight followed							203 00
							11,702 23
7 cars on rate, 154 cattle.							
7 " local, 128 "							
14		282					
Exchange							8 80
							11,711 03
Error yesterday							1 00
Draft for							$11,710 03

E. & O. E.

731 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *Aug.* 14, 1885.

Cattle bought by W. P. Bowen & Co.:

W. & H.,	1	cattle,	1,460, 2½	36 50
McC. & M.,	1	"	1,050, 1.80	18 90
C. L. & S.,	1	"	1,340, 2½	33 50
"	1	"	990, 1.75	17 32
"	1	"	1,100, 2	22 00
"	28	"	14,520, 2½	326 70
"	1	"	780, 3.15	24 57
"	1	"	980, "	30 87
A. J. G. & Co.,	23	"	20,550, 3c.	615 50
"	16	"	13,430, 2.60	349 18
	74			$1,476 04
3 cars, r. fr't				25
				$1,451 04
Exchange				1 10
Draft for				$1,452 14

732 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., 8, 15, 1885.

R., Sons & Co.

GENTS: Bowen only got one car here to-day. He thinks they

want too much for Texas, asking 3¾ for 925 Texas; hand you bill of 28 cattle, & make draft for same, $538.33.

Yours, &c., A. J. GILLESPIE & CO.

A. J. Gillespie & Co., live stock commission merchants, room 15 Exchange building.

KANSAS CITY, MO., 8, 15, 1885.

Sold to W. P. Bowen & Co.:

Cattle.	Hogs.	Sheep.	Weight.	Price.			
28	----	----	19,170	2.90	555	93	
Cash, Bowen					20	00	
							575 93
Exchange							40
							576 33
Cash of M., M. & Co. followed fr't							38
Draft for							$538 33

733 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *August* 17, 1885.

Mess. Rappal, Sons & Co., Union Yards, Chicago.

GENTS: We send you statement of acc. Bowen & R. July 1st up to Aug. 4th before we commence drawing, total cost on cattle. There is one lot 20 cattle that we did not get any return for; that is charged in the bill; make draft on you to-day for 725.70, as per bill here inclosed, and if there is anything that you do not find correct please let us hear from you in regard to same, & will explain or make correct.

Please honor draft, & oblige,

Yours truly, A. J. GILLESPIE & CO.

A. J. Gillespie & Co., live stock commission merchants, room 15 Exchange building.

KANSAS CITY, Mo., *Aug.* 17, 1885.

Sold to Bowen & R.:

	Cattle.	Weight.	Price.	
W. & H.	8	6,820	3c.	$204 60
"	99	91,020	3.20	2,912 64
"	53	48,230	3.20	1,543 36
	2	2,360	2c.	47 20
Exchange				3 05
	162			4,710 85
Freight followed				673 30
Draft for				4,037 55

7 cars.

734 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *Aug.* 16*th*, 1885.

To ½ interest due James on 254 cattle sold acc. Bowen & R. August 14th	395 81
Balance due A. J. G & Co. on acc.	182 39
Commission on Bowen & R. cattle shipped since August 1st, '85, at $2.50 per car on 59 cars	147 50
We make draft for	$725 70

No. cars Bowen & R.:

Aug. 5th.	118	cattle	6 cars.
" 7.	314	"	17 "
" 12.	412	"	18 "
" 13.	282	"	14 "
" 14.	74	"	3 "
" 15.	28	"	1 "
			59 cars.

735 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *August 17th*, 1885.

Rappal, Sons & Co., Chicago.

GENTS: We ship you to-night 4 cars of good cattle acc. James— 66 head that average 1,298 here, or weight 85,700 lbs., & cost 4.95. Now, we want you to do some work & make a good sale if possible. We also make draft on them for 4,100.00; please protect same; hand you bill for 7 cars acc. Bowen & R. & make draft for cost of same.

Yours, &c. A. J. GILLESPIE & CO.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *August* 18, 1885.

Cattle bought by Rappal & J. A. Jennings:

Of J. R. Stoler & Co.,	225	cattle,	236,360,	@ 3.60	8,508	96
"	18	"	22,920,	4.60	1,054	32
"	38	"	48,580,	4.40	2,137	52
"	41	"	41,190,	3½	1,441	65
16 cars,	322				13,142	45
Exchange					9	90
Draft for					$13,152	35

6 cars, @ 4.00.
10 " " 4.15.

736 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *August* 18, 1885.

Cattle bought by Bowen & R.:

21	cattle,	22,060,	@ 4c.	*1,050	882 40
1	"	700,	2½		17 50
1	"	1,180,	3½		41 30
16	"	18,560,	4¼,	1,160 #	788 80
17	"	11,080,	4¼,	1,122	810 90
14	"	14,100,	3¾,	1,007	528 75
18	"	22,530,	4.60,	1,251	1,036 38
59	"	62,440,	3.80,	1,058	2,372 72
34	"	29,320,	2.85,	856	835 62
129	"	133,350,	3.70,	1,033	4,933 95
310	cattle.				$12,248 32
Freight followed					175 00
					$12,073 32
Exchange					9 00
Made draft for					$12,082 32

130, @ 4.15.
Thos., 20.

737 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *August* 18, 1885.

Mess. Rappal, Sons & Co., Chicago.

GENTS: We forward to you bills of cattle bought to-day by Rap-

* Figures printed in bold-face type in pencil in original.

pal, Bowen & Jennings, & one lot of 16 cars bought in name of Jennings, and make draft for am't as per bills on Bowen & R., $12,082.32, and on Jennings & R., $1,352.35; have about 6,500 cattle here to-day. Let us know how Jennings Utah cattle sell & oblige,

A. J. GILLESPIE & CO.

738 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., 8, 21, 1885.

Mess. Rappal, Sons & Co., Union Yards, Ills.

GENTS: We send you bills of 373 cattle acc. Bowen and make 2 drafts for same—10,000, 1,018.08—total cost of cattle, & we send 16 cars to-night, & they are holding some back that will get out to-morrow.

We ship you, acc't James, to-night 4 cars, 97 cattle, & make draft on same for $2,000.00; do the best you can. We have not got any return on 3 cars, 66 cattle, shipped on 17th, that should have been here to-day.

Yours, &c., A. J. GILLESPIE & CO.

James' cattle cost:

63, 48,220, 2¾		1,326 05
1, 590, 2c.		11 80
33, 32,030, 2.80		896 84
97		$2,234 69

739 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *Aug.* 21*st*, 1885.

Cattle Bought by Bowen & R.

29	cattle,	30,260,	@	3.85 --	1,165	05	
3	"	2,500,		3½ --	81	25	
1	"	980,		3.85 --	37	73	
1	"	1,200,		3¾ --	45	00	
27	"	24,140,		2.70 --	651	78	
12	"	10,970,		3.10 --	340	07	
55	"	48,660,		3 --	1,459	80	
13	"	13,180,		3 --	395	40	
3	"	2,360,		2½ --	59	00	
4	"	4,000,		4 --	160	00	
10	"	11,930,		4.35 --	518	95	
1	"	1,260,		4½ --	56	70	
1	"	900,		2½ --	22	50	
24	"	21,700,		2.65 --	575	05	
20	"	20,060,		3c. --	601	80	
1	"	950,		2 --	19	00	
38	"	41,270,		4 --	1,650	80	
23	"	20,060,		3.10 --	621	86	
					8,461	74	

For'd		8,461 74
1 cattle,	680, @ 2¼	17 00
40 do.	34,130, @ 2.60	887 38
20 do.	22,470, " 4⅛	926 89
2 do.	1,810, " 3¼	58 82
44 do.	43,000, " 3¾	1,397 50
		$11,749 33
Exchange		8 25
		$11,757 58
Less freight fol.		739 50
2 drafts for		$11,018 08
D'ft		10,000
		1,018 08
		$11,018 08

***266**
107

16)373(23
32

53

* Figures printed in bold-face type in pencil in original.

740 **A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.**

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., 8, 22, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: The cattle shipped for Jenning was all his; so Mr. F. J. R., Sr., says. No one else had any interest in them. The cattle sent you to-day & yesterday will have to put bills together, as *they* was some tail cattle sorted out here & sold, & some of our bunches turned over to Snider's to-day & go to-night with cattle that they ship.

741 **A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.**

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., 8, 22, 1885.

Cattle acc. W. P. Bowen & Co.:

27 cattle, 30,150, 3c.		904 50
3 " 3,570, 2½		89 25
4 " 4,160, 3¾		156 00
34		1,149 75
18 cattle sold here		843 70
Tail cattle of yesterday		306 05
Rebate of G. & S.		157 60
Draft for		$148 45

We ship 2 cars, 44 cattle, & balance of cattle turned in with the Snider shipment. We hand you tickets for 129 cattle shipped on 18th; also for to-day's 34 cattle. In bill of 18 there was 175.00 rebate—fr't on 6 cars cattle acc. Jas. Black, $20.00; on 18 c. acc. Snider & Co., 2 cars, 34 cattle, $80.00; acc. McFarland, 3 cars, 59

cattle, $75.00, making $175.00. On the 19th, 7 cars, G. & S. rebate, 173.50, & on 6 cars of Snider on 18th, $252.40; total taken off bill, $425.90; bill of 18th there was 310 cattle, & only 129 shipped that day, & balance shipped on 19th.

742 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *Aug.* 24, 1885.

Cattle bought for Bowen & Co.:

5	cattle,	5,820, @	4c.	232 80
1	"	1,400,	4½	63 00
13	"	13,310,	3.60	479 16
2	"	2,280,	4½	102 60
17	"	17,850,	4.60	821 10
1	"	1,000,	2	20 00
1	"	1,360,	3c.	40 80
40				1,759 46
1	of Snider.		Exc.	1 35
41				1,760 81
2	cars.			
2	drafts for			970 21
	"			790 60
				$1,760 81

743 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., 8, 25, 1885.

Rappal, S. & Co., U. S. Yards.

GENTS: We send you 25 cattle, 1 car, acc. James, and make draft

for 500.00 on same. Ship via C. & A. & send order via shipper; cattle billed L. S. R. to A. J. Snider & Co. We hand you bill for 209 cattle acc. Bowen & make draft for same.

Yours truly, A. J. GILLESPIE & CO.

James' cattle cost 2.70 & 1 at 2.80.

744 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., 8, 25, 1885.

Cattle bought acc. Bowen & R.:

83	cattle, 81,900, @ 3.15			2,579 85
126	" 126,190, @ "			3,974 98
209	*208,090			6,554 83
10	cars less fr't	661 10		
	Error, as per letter	30		
				661 40
				5,893 43
	Exc.			4 45
	Draft for			$5,897 88

745 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., 8, 26, 1885.

Mess. Rappal, Sons & Co., Union Yards.

GENTS: We send you 4 cars cattle, 100 head, acc. James, and make

* Figures printed in bold-face type in pencil in original.

draft on same for $2,000.00; also send 2 cars for Bowen & R., & enclose bill of same.

Yours truly, A. J. GILLESPIE & CO.

James' cattle cost, 100 cattle, 81,890, @ 2.70.

(Heading same as above letter.)

KANSAS CITY, Mo., 8, 26, 1885.

Cattle bought by Bowen & R.:

38 cattle, 46,140, @ 4.20	1,937 88
Rebate fr't	70 00
	1,867 88
Exc.	1 40
Draft for	$1,869 28

*38)46140(1211
38
81
76
54
38
60

21,000
9
30,000
6,000
24,000

746 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *August* 27, 1885.

Rappal, Sons & Co.

GENTS: On or about the 1st of the month Snider & Co. shipped 16 cars cattle that James has an interest in. Will you please send us dup. acc. sales, & oblige, so we can settle it up?

Yours truly, A. J. GILLESPIE & CO.

***Think was 223 cattle ship-ed July 23.**

*Words and figures printed in bold-face type in pencil in original.

747 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., 8, 29, 1885.

Rappal, Sons & Co.

GENTS: Snider & Co. send you 9 cars cattle that they could not sell to-day, and Metcalf, Moore & Co. send one car for acc. of Lobb. F. J. R., Sr., asked me to write you & let you know they *was* coming; also to tell you he wanted you to work on them & get a good price. The 8 cars cattle we send you to-night want you to do some work on them & keep them separate, as James has interest in them. The 6 cars billed Q., M. & Co. & Jones Bros. can run together—all the same cattle—and the other 2 cars keep separate.

Yours truly, A. J. GILLESPIE & CO.

748 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *Aug.* 29, 1885.

Cattle bought by W. P. Bowen & Co.:

46	cattle,	64,056,	@	4.65	2,978 60
2	"	2,784,	"	4	111 36
48	"	66,462,	"	4.60	3,057 25
2	"	2,768,	"	4	110 72
20	"	24,170,	"	4.15	1,003 05
19	"	24,140,	"	4.60	1,110 44
137					$8,371 42

8 cars.

Rebate fr't	66	
	66	
	79	
		211 00
		8,160 42
Exc.		6 13
Draft for		$8,166 55

The cattle billed to Q., M. Co. & to Jones Bros. get expense bills, as they are billed, so we can get a rebate, & send us bills.
The 4 cattle left from yesterday go in Snider's load to-day.

749 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., 8, 28, 1885.

Cattle bought by Bowen & R.:

22	cattle,	26,330,	@ 4.85	1,277 00
2	"	2,740,	@ 5	137 00
1	"	1,240,	" 4¼	52 75
36	"	47,860,	" 4¾	2,273 30
54	"	66,480,	" 4¼	2,825 40
54	"	69,610,	" 4.20	2,923 62
1	"	1,050,	" 2½	26 25
170				9,515 32

9 cars.

Rebate freight	44	
	23 75	
		67 75
		9,447 57
Exchange		7 10
Draft for		9,454 67

750 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *Sept.* 1*st*, 1885.

Cattle acc. Bowen & R.:

1	cattle,	1,230, 2	24 60
7	"	6,740, 3	202 20
38	"	46,210, 4½	2,079 45
23	"	27,220, 4¼	1,156 85
1	"	1,140, 3¾	42 75
2	"	2,020, 3¾	75 75
1	"	1,120, "	42 00
18	"	25,240, 4.85	12,241 14
57	"	70,940, 4.75	3,369 65
4	"	3,740, 2.70	100 98
20	"	23,240, 4.20	976 08
1	"	1,250, 3½	43 75
3	"	3,840, 3.90	149 76
51	"	65,200, 4.80	3,129 60
1	"	950, 2.75	26 12
228			12,643 68
	Rebate for		191 00
			$12,452 68
	Exc.		9 33
			12,462 01

12 cars.

751 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Sept.* 1*st*, 1885.

Rappal, Sons & Co., Chicago.

GENTS: We send 12 cars cattle acc. Bowen & R. and hand you bill of same.

Also send 2 cars acc. James & make draft for 1,900.00 on them.
Yours &c, A. J. G. & CO.

James' cost:

32, 41,800, 4.40
2, 2,930, 4.30 $1,965.19.

*44,730

752 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Sept.* 2*d*, 1885.

Cattle bought by Bowen & Co.:

2	cattle, 2,190, 3⅞			84 85
16	" 21,300, 4¾			1,011 75
2	" 2,360, 4¼			100 30
19	" 22,260, 4.20			934 92
19	" 24,880, 3.95			982 76
32	" 41,130, 3.55			1,460 11
90				4,574 69
2	sold here, 2,190, @ 4⅛	90 33		
	Rebate fr't	97 00		
				187 33
88				4,387 36
Exchange				3 30
Draft for				$4,390 66

The 32 cattle *was* ship-ed last night after I had left.

* Figures printed in bold-face type in pencil in original.

753 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *Sept.* 2*d*, 1885.

Rappal, Sons & Co., Chicago, Ills.

GENTS: We send you 3 cars acc. Bowen & R., & enclose bill of same. We also send you 4 cars, 72 cattle, acc. James; 68 cost 4.20, & the 4 are tops out of 15 that cost 4.70. They are pretty good, & want you to work on them. We make draft on them for $4,000.00. Mr. Rappal asked me to write you — send him the am't loss or gain on Bowen & E. acc., so he can tell how things was the 1st of Sept.

Yours, &c., A. J. GILLESPIE & CO.

The 4 cars James cattle are the ones billed to H., E. & Co.

754 A. J. Gillespie. J. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, Mo., *Sept.* 4, 1885.

Acc. Bowen and Rappal:

1	cattle,	1,100,	@ 3.75		41 25
1		1,060,	"		39 75
75		64,200,	2.90		1,809 60
36		41,060,	4¾		1,950 35
20		23,660,	3.80		899 08
1		1,070,	3c.		32 10
20		22,920,	3.80		870 96
18		22,000,	4.80		1,056 00
20		25,700,	4.20		1,079 40
1		1,780,	1.75		31 15
69		73,270,	4.20		3,077 38
48		61,640,	"		2,588 88
219		281,480,	less 4.10 / 25.00		11,515 68

James' proffit 137 cattle, sold 9, 1		104 81
Telegragh bill for av'gs		25 34
		$25,121 73
Rebate freight	680 50	
James' loss 132 cattle, ship-ed by Snider, sold 8, 31	75 35	
		755 85
		24,365 88
Exchange		18 50
		$24,384 38
2 drafts		13,000
		10,384 38
		23,384 38
		10,000 00
On St. Louis d'ft		24,384 38

755 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 9, 5, 1885.

Mess. Rappal, Sons & Co.

GENTS: On August 15 and 27th we send you one car on each date; please get us expense bill of same; also on the Q., M. & Co. and Jones Bros. cattle sent you the other day that we asked for we have not got yet. Please look this up & send them.

F. J. R., Sr., collected of H. & St. Joe R. R. Co. $15.00 on 3 cars cattle shipped from Liberty some time ago; that belongs to Bowen & Phalan. Charge Rappal, Sr., & cr. Bowen & Co. 7.50 & P. Phalan 7.50. We send 3 cars to-night, 2 billed M. Stults & one Dayton & Dunham.

Yours truly, A. J. GILLESPIE & CO.

756 SEPT. 5, '85.

Cattle bought by Bowen and R.:

35	cattle,	42,200, @ 4¼		1,793 50
1	"	1,200, 3.75		45
1	"	1,280, 3.80		48 64
1	"	cow, 1,130, 2¾		31 07
18	"	21,700, 4½		976 50
1	"	1,060, 4		42 40

3 cars.

		$2,937 11
Exc.		2 15
		2,939 26
Sold—		
1 cow, 1,130, at 3c.	33 90	
Reb. fr't	37	
		70 90
Draft for		$2,868 36

757 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Sept.* 9, 1885.

Cattle acc. Bowen & Rappal:

20	cattle,	19,440, ***972** #, @	3.70	719 28
4	"	4,599, **1,147** #,	4c.	183 60
6	"	7,740, **1,290** #,	4½	348 30
20	"	26,600, **1,330** #,	4.70	1,250 20
58	"	82,490, **422** #,	5.35	4,413 21
10	"	11,920, **1,192** #,	4.50	536 40
14	"	19,180, **1,370** #,	5	959 00
13	"	12,950, **996** #,	2.90	375 55
54	"	72,840, **1,348** #,	4.85	3,532 74
41	"	55,170, **1,345** #,	"	2,675 74
9	"	11,550, **1,283** #,	4¼	490 87
377	"	384,530, **1,019** #,	2.70	10,382 31
626				25,867 20

* Figures printed in bold-face type in pencil in original.

25 sold here	6c., 8,510, at 5½		468 05	
	19c., 19,300, " 3.20		714 10	
601			1,182 15	1,182 15
30 cars.				
				24,685 05
Followed fr't				1,355 50
				23,329 55
Exchange				17 45
Draft for				$23,347 00

758 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Sept. 10th*, 1885.

Cattle paid for acc. Bowen & R.:

1	cattle,	1,320, @ 3½		46 20
2	"	1,790,	2.75	49 22
4	"	5,020,	3.60	180 72
1	"	1,060,	4	42 40
2	"	650,	3.15	20 47
22	"	21,070,	3¼	684 77
38	"	36,740,	3¼	1,249 16
2	"	2,230,	2¾	61 32
10	"	8,350,	2.85	237 97
2	"	2,020,	2¾	55 55
2	"	2,640,	4	105 60
1	"	1,310,	3	39 30
19	"	20,900,	3.40	710 60
2	"	2,270,	2.90	65 83
3	"	2,420,	2½	60 50
2	"	1,980,	2½	49 50
17	"	16,830,	3	504 90
7	"	5,700,	2.85	162 45
136				4,326 46
7 cars.				

* Words and figures printed in bold-face type in pencil in original.

Fr't rebate		198
		4,128 46
Exc.		3 10
Draft for		4,131 56

759 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Sept.* 12, 1885.

Cattle bought by Bowen & Co.:

In 7 cars. Car lot ship-ed, 9, 10.	2	cattle,	2,020, @	3c.	60 60
	1	"	870, "	2.75	23 92
	2	"	2,220, "	1.75	38 85
	1	"	880, "	2½	22 00
	9	"	9,730, "	3.40	330 82
	10	"	13,300, "	4.60	611 80
	2	"	2,730, "	4¼	116 02
	10	"	12,840, "	4.80	616 32
	1	"	1,160, "	4¼	49 30
	15	"	18,500, "	4½	832 40
	1	"	1,200, "	4c.	48 00
	1	"	1,000, "	4	42 40
	16	"	20,140, "	4.60	926 44
	4	"	4,150, "	4	166 00
	17	"	22,220, "	4.60	1,022 12
	1	"	1,290, "	4c.	51 60
	18	"	24,630, "	4.40	1,083 72
	5	"	6,710, "	3.30	221 43
	34	"	48,360, "	5.10	2,466 36
					$8,730 20
Rebate fr't					100 00
					8,630 20
Exc.					6 50
Draft for					$8,636 70

760 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, Mo., *Sept.* 15, 1885.

11 cars bought by Rappal, Sons & Co.:

36	cattle, 45,100, @ 4.35		1,961 85
2	2,070, 4		82 80
35	46,680, 4.65		2,170 62
2	2,540, 4¼		107 95
1	1,290, 4¼		54 82
3	3,400, 4		136 00
8	10,220, 4¼		434 35
2	2,170, "		92 22
56	74,390, 4.60		3,417 80
1	1,600, 3¾		60 00
54	73,790, 4.60		3,394 34
200			$11,912 75
11 cars.			
Back fr't			195
			11,717 75
Exc.			8 80
			11,726 55
Your cr.			78 42
Make draft for			$11,648 13
Cattle ship-ed St. Louis, net			1,078 42
D'ft			1,000 00

761 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, Mo., *Sept.* 16, 1885.

Cattle acc. Bowen & Co.:

17 cattle, 21,950, @ 5		1,097 50
2 do., 2,420, @ 4½		108 90
		1,177 40
Fr't		29 00
Exc.		85
D'ft for		1,178 25

1 car.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, Mo., *Sept.* 18, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

DEAR SIRS: We ship you 25 cars cattle to-day acc. of W. P. Bowen, 11 cars over the Hannibal & 14 cars over the Wabash. We make draft for $20,000, & will send scale ticket & cost of same by next mail, as all the bills are not in yet.

Yours resp'y, A. J. GILLESPIE & CO.

762 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., —— —, 188–.

241	cattle, cost		7,989 10
4	"	4,460, @ 3c.	133 80
1	"	1,050, " 1.75	18 37
4	"	4,270, " 3	128 10
1	"	970, " 1¾	16 97
7	"	8,870, " 4.60	408 02
1	"	980, " 3.75	36 75
8	"	8,100, " 2½	202 50
63	"	66,340, " 3.15	2,089 71
42	"	43,820, " 3.15	1,380 33
62	"	64,800, " "	2,041 20
57	"	70,540, " 4.35	3,068 49
39	"	38,500, " 3.15	1,212 75
530			18,726 09
	25 cars.		
	Freight followed		953 00
			17,773 09
	18 sold here		494 55
			$17,278 54

763 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., *Sept. 18th*, 1885.

Cattle acc. Bowen and Co.:

27	cattle,	25,420, @ 2.75	699 05
13	do.,	12,360, " 2.80	346 08
19	do.,	20,280, " 3¼	659 10

22	cattle,	22,740, @	2.70	613 98
27	do.,	27,660, "	"	746 82
3	do.,	2,780, "	2.65	73 67
9	do.,	7,760, "	2.55	197 88
14	do.,	12,840, "	2.75	353 10
2	do.,	1,950, "	2.50	48 75
25	do.,	21,840, "	2.90	633 36
18	do.,	15,700,	3.15	494 55
7	do.,	9,390,	4½	422 55
1	do.,	1,180,	3c.	35 40
13	do.,	15,500,	3¼	503 75
8	do.,	10,200,	4c.	408 00
2	do.,	2,360,	4c.	94 40
14	do.,	18,680,	4¼	793 90
15	do.,	18,940,	4.15	786 01
2	do.,	2,100,	3¼	78 75
241	cattle.			***7,989 10**
				71,010 97

764 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Sept.* 19, 1885.

Mess. Rappal, Sons & Co.

GENTS: Enclosed we hand you bills of cattle shipped to-night. I went away to the fair yesterday and let boys tend to shipping, & they could not keep things straight & made a draft by guess. I straighten them up & send you bills & tickets this morning, and deduct the order draft from your bill to-day, $2,721.41.

Hoping you will find same all correct, we remain,

Yours respectfully, A. J. GILLESPIE & CO.

* Figures printed in bold-face type in pencil in original.

765 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., *Sept*, 19, 1885.

Commission on 146 cars from August 31st to date, @ 2.50 per car	365 00
Bal. due us from R., Sons & Co.	102 14
We make draft for	$467 14

Date of shipments.

Sept. 1	12 cars.
2	5 "
4	25 "
5	3 "
9	30 "
10	7 "
12	8 "
15	11 "
16	1 "
18	25 "
19	19 "
	146 cars.

Will you please send us the No. of cattle you have sold for Smalls, or send us a draft for ½ commission, and oblige—

A. J. GILLESPIE & CO.

766 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, MO., *Sept.* 22*d*, 1885.

Cattle bought by W. P. Bowen & Co.:

111	cattle,	89,900,	809 #, @ 2.60		2,337 40
16	"	15,320,	957 #, 2.90		444 28
237	"	237,850,	1,003 #, 3c.		7,135 50
199	"	198,730,	998 #, 3c.		5,961 90
62	"	62,420,	1,006 #, 3.10		1,935 02
10	"	8,380,	838 #, 2		167 60
104	"	108,780,	1,045 #, 3c.		3,263 40
7	"	5,510,	787 #, 2.35		129 48
4	"	2,860,	715 #, 2½		71 50
1	"	670,	2		13 40
2	"	1,470,	735 #, 2		29 40
3	"	2,050,	1,016 #, 2.35		48 17
2	"	1,950,	975 #, 2.90		56 55
2	"	2,040,	1,020 3¼		66 30
260					$21,659 90

34 cars.

Rebate fr't		1,000 00
		20,659 90
Exc.		15 45
Draft for		$20,675 35
		2 31
		20,677 66

767 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., 9, 23*d*, 1885.

Bought by Bowen & Co.:

13	cattle,	13,550,	***1,042,**	@ 2.90	392 95
4	"	4,510,	**1,110,**	"	130 79
4	"	4,440,		3	133 20
1	"	1,230,		2	24 60
17	"	19,120,	**1,124,**	3c.	573 60
5	"	4,290,	**858,**	2½	53 00
2	"	2,120,	**1,060,**	2½	107 25
4	"	4,400,	**1,100,**	2.40	105 60
2	"	2,600,	**1,300,**	4.65	120 90
1	"	1,280,		3.75	48 00
9	"	11,940,	**1,325,**	4.65	555 21
3	"	2,300,	**766,**	2	46 00
36	"	33,860,	**940,**	2.90	981 94
3	"	3,830,	**1,270,**	4.30	164 69
19	"	24,580,	**1,293,**	4.95	1,216 71
45	"	47,300,	**1,051,**	3.10	1,466 30
2	"	1,150, / 1,280,	2,430,	3c. / 2	34 50 / 25 60
12	"	12,350,	**1,029,**	3	370 50
29	"	20,500,	**690,**	2.15	440 75
10	"	9,900,	**990,**	3	297 00
221	head.				7,289 09
Rebate freight					475 00
					6,814 09
Ex.					5 10
					6,819 19

Draft for $6,819.19.

* Figures printed in bold-face type in pencil in original.

768 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

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KANSAS CITY, Mo., 9, 24, 1885.

Cattle bought acc. Bowen & R.:

27	cattle,	24,990,	*1,291,	4.65	1,627 03
64	"	67,280,	1,051,	3c.	2,018 40
10	"	9,270,	927,	2.60	241 02
2	"	2,100,	1,050,	1.87½	39 37
3	"	3,560,	1,153,	"	66 75
106					3,992 57
24		21,900,	980,	2.60	569 40
130					4,561 97
64			Exc.		3 42
66			Draft for		$4,565 39

6 cars.

769 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *Sept.* 25, 1885.

Cattle bought by W. P. Bowen & Co.:

2	cattle,	2,260,	@ 3c.	67 80
1	"	1,260,	" 3¼	40 95
2	"	for		20 00
245	"	251,300,	3⅛	7,853 12
88	"	90,860,	"	2,839 37
66	"	67,610,	"	2,112 81

* Words and figures printed in bold-face type in pencil in original.

138	cattle,	124,070,	***900,**	@ 2.87½	3,567 00
27	"	18,520,	**700,**	2.15	398 18
115	"	100,970,	**878,**	2.87½	2,902 88
8	"	7,350,	**918,**	2.85	209 47
167	"	170,740,	**1,022,**	3.10	5,292 94
1	"	for			20 00
5	"	4,920,	**984,**	2.70	132 84
19	"	21,860,	**1,150,**	4.30	939 98
20	"	21,390,	**1,069,**	2¾c., 10 off	577 47
1	"	850,		2.70	22 95
1	"	1,130,		1¾	19 77
16	"	15,780,	**986,**	2.85	449 73
6	"	5,140,		2½	128 50
928					27,595 76

Rebate for Snider	760	
Q., M. & Co	480	
Stoler	450	
		1,690 00
		25,905 76
Ex		19 85
Draft for		$25,925 61

770 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., *Sept.* 26, 1885.

Cattle bought by Bowen & Co.:

2	cattle,	1,880,	***940,**	@ 2.65	49 82
10	"	12,090,	**1,209 #,**	3.10	324 79
19	"	21,720,	**1,143 #,**	4¼	923 10
1	"	1,010,		3¾	37 87
1	"	790,		1.75	13 82
11	"	12,250,	**1,113 #,**	2.30, $10 off	271 75
1	"	1,260,		2¾	34 65
2	"	1,770,		2½	44 25
11	"	11,730,	**1,065 #,**	2.95	346 03
49	"	38,540,	**787 #,**	2.70	1,040 58

* Figures printed in bold-face type in pencil in original.

3	cattle,	2,360,	**775** #, @	2¼	53 10
2	"	2,380,		2¾	65 45
1	"	1,270,		3	38 10
4	"	5,280,	**1,320** #,	2.80	147 84
1	"	1,100,		3.65	40 15
2	"	for			35 00
1	"	900,		2	18 00
1	"	880,		2	17 60
122		For'd			3,551 90

771 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., 9, 26,, 1885.

122		Am't for'd			3,551 90
6	cattle,	5,980,	@	2.80	167 44
1	"	960,		2½	24 00
1	"	890,		2½	22 25
1	"	1,230,		2¾	33 82
3	"	2,490,	*830,	2.60	64 74
32	"	28,560,	898,	2.80	799 68
53	"	48,706,	890,	"	1,363 60
11	"	9,000,		"	252 00
1	"	760,		1½	11 40
2	"	1,940,	970 #,	2¾	53 35
24	"	19,200,	800 #,	2.65	508 80
1	"	for			10 00
258					6,862 98
Rebate fr't				570 00	
15 sold here				327 24	
					897 24
					5,965 74
Exc.					4 50
					$5,970 24

Made draft for $5,960; will add in the $10 in draft Monday; made & error & caught on after.

*Figures printed in bold-face type in pencil in original.

772 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, Mo., 9, 28, 1885.

9 cars cattle bought by Bowen & Co.:

12	cattle, @ 10 ea.			120 00
9	"	8,850, 2.70		238 95
14	"	13,550, 2¾		372 62
167	"	135,500, 2.80		3,794 00
1	"	1,110, 2.40		26 64
20	"	22,600, 3.35		757 10
5	"	5,130, 3		153 90
228				5,463 21
Rebate fr't on 7 cars			243 00	
On Peters, 9/22			110 00	
				353 00
				5,110 21
Exc.				3 82
Draft for				5,114 03

773 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, Mo., *Sept.* 29, 1885.

Cattle bought by Bowen & Co.:

17	cattle, 14,980, ***880**, @ 2.85		426 93
60	"	66,880, **1,114**, 4.17½	2,792 24
2	"	2,480, **1,240**, 3.35	83 08
1	"	for	13
12	"	9,380, **781**, @ 2.60	243 88

*Figures printed in bold-face type in pencil in original.

1	cattle,	1,430,	@ 4¼	60 77
1	"	940,	2¼	21 15
1	"	1,020,	2½	25 50
1	"	870,	2.40	20 88
1	"	1,000,	2.70	27 00
1	"	1,000,	3	30 00
3	"	2,580, **860,***	2	51 60
101				3,796 03

6 cattle taken out of feeders & not weighed.

107

Rebate fr't ---------- 85 00

3,711 03

Exc. ---------- 2 75

Draft ---------- $3,713 78

774 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

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KANSAS CITY, MO., —— —, 188–.

In regard to the mine tell Henry Eder that I will pay my proportion if they will get some other good man, but not Tom Furgason, & he wants you to sell cattle every night & not hold them over if there is any buyers. They are handling a good many feeders & stockers here & taking out an odd steer here & there, & some time putting in cattle; that is the way you come to be short cattle. You don't say anything about shipments that have too many.

Yours, &c., A. J. GILLESPIE & CO.

*Figures printed in bold-face type in pencil in original.

775 A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., 10, 1*st*, 1885.

Mess. Rappal, Sons & Co., Chicago, Ills.

GENTS: Your message in regard to short cattle—the cattle in the Wabash rick are short 43 cattle, and there are 19 cattle left here, odds & ends, to-night, & there is & overcharge of 300 dollars that will collect, & have put in claim to Wabash Railroad Co., & hope to get it fixed soon.

Yours truly, A. J. GILLESPIE & CO.

P. S. *& Co.*—Your father says the party can have the property on Chicago St. at the terms you mention; also the market on Joliet St. at $12.00 per month for 1 year.

776 EXHIBIT 12 of T. E. Gillespie's Testimony.

K. A. B.

EXHIBIT 9 to F. J. Rappal Jr.'s Testimony. E. B. S., Master.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, Mo., *Sept.* 30, 1885.

W. P. Bowen bought—

133 cattle, 162,660, @ 4c.	6,506 40
Followed fr't	280 00
	$6,226 40
Exc.	4 70
Draft	$6,231 10

777 EXHIBIT 15 of T. E. Gillespie's Testimony.

K. A. B.

EXHIBIT 8 to F. J. Rappal Jr.'s Testimony. E. B. Sherman, Master.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *Oct. 1st*, 1885.

Cattle bought by Bowen & Co.:

375	cattle,	322,880,	@ 2½		8,072 00
102	"	101,870,	" 2.90		2,954 23
78	"	79,790,	" 2.90		2,313 91
92	"	92,120,	" "		2,671 48
82	"	81,735,	" "		2,370 31
85	"	85,610,	" "		2,482 69
1	"	800,	" "		19 20
815					$20,883 82

35 cars.

Rebate fr't	600	
	792 80	
		1,392 80
		$19,491 02
Exc.		14 60
Draft for		$19,505 62

778 EXHIBIT 17 of T. E. Gillespie's Testimony.

K. A. B.

EXHIBIT 7 to F. J. Rappal Jr.'s Testimony. E. B. S., Master.

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *Oct.* 3, 1885.

Cattle shipped by Bowen & Co.:

A. J. S. & Co.	3	cattle,	1,900,	950,	@	2.75	52 25
"	3	"	3,080,	1,026,	"	3.40	104 72
"	7	"	7,400,	1,057,	"	3.40	251 60
"	13	"	15,150,	1,165,	"	3.40	515 10
J. R. S. & Co.	2	"	1,880,	940,	"	2.50	47 00
"	2	"	1,000,	—,	"	2c.	20 00
Mountjoy & Co.	79	"	60,970,	771,	"	1.75	1,066 97
A. J. S. & Co.	12	"	10,070,	839,	"	2¾	276 92
W. & H.	1	"	830,	—,	"	2.35	19 50
Mountjoy & Co.	1	"	800,	"	"	2c.	16 00
	121						$2,370 06

Charges followed	160 00	
"	40 00	
Rebate overcharge	300 00	
" of Wabash rick	761 97	
By 11 cattle sold here	415 84	
		1,677 81
		692 25
Exc.		55
		691 70

This leaves 9 cattle here.

779 E.

Ex. 16 to T. E. Gillespie.

Kansas City Stock-Yards Company.

A. J. S. & Co. H., C. & Co.

Acc't of Bowen.

375 cattle 322,880

Memorandum of stock.	Block.	Pen.
Taken from	14	1
Yarded in	--	2
		3

Date, Oct. 1, 1885.

SUFFUNGTON,
Weighmaster.

Endorsed.

***A. J. G. & Co.**
Pay 2.50.
Bowen.

322880
2,50
8,072.00 ✓

E.

Kansas City Stock-Yards Company.

Q., M. & Co. S. & M.

Acc't of Bowen.

102 cattle 101,870

Memorandum of stock.	Block.	Pen.
Taken from	24	6
Yarded in	--	7

Date, Oct. 1, 1885.

DAVIS,
Weighmaster.

Endorsed.

***A. J. G.**
2.90.
W. P. B.

101870
2.90
91683
20374
$2,954.23 ✓

* Words and figures printed in bold-face type in pencil in original.

E.

Kansas City Stock-Yards Company.

Q., M. & Co. S. & M.

Acc't Bowen.

92 cattle 92,120

Memorandum of stock.	Block.	Pen.
Taken from	25	4
Yarded in	--	5

Date, Oct. 1, 1885.

DAVIS,
Weighmaster.

Endorsed.

***A. J. G.**
2.20.
W. P. B.

92120
2.90
82908
18424
$2,671.48 ✓

780

E.

Kansas City Stock-Yards Company.

Q., M. & Co. S. & M.

Acc't of Bowen.

85 cattle 85,610

Memorandum of stock.	Block.	Pen.
Taken from	25	2
Yarded in	--	3

Date, Oct., 1885.

DAVIS,
Weighmaster.

Endorsed.

***A. J. G.**
2.90.
W. P. B.

85610
2.90
77049
171122
2,482.69 ✓

* Words and figures printed in bold-face type in pencil in original.

E.

Kansas City Stock-Yards Company.

Q., M. & Co. S. & M.

Acc't of Bowen.

82 cattle 81,735

Memorandum of stock.	Block.	Pen.
Taken from	24	2, 3, 4
Yarded in	--	5, 6, 7

Date, Oct. 1, 1885.

DAVIS,
Weighmaster.

Endorsed.

*A. J. G.
2.90.
W. P. B.

81735
2.90
735615
163470
$2,370.31

781 E.

Kansas City Stock-Yards Company.

Q., M. & Co. S. & M.

Acc't of Bowen.

78 cattle 79,790

Memorandum of stock.	Block.	Pen.
Taken from		
Yarded in		

Date, Oct. 1, 1885.

DAVIS,
Weighmaster.

Endorsed.

*A. J. G.
2.90.
W. P. B.

79790
2.90
71811
15958
$2,313.91 ✓

* Words and figures printed in bold-face type in pencil in original.

Ex. 18 of T. E. Gillespie.

Kansas City Stock-Yards Company.

M., W. & Co. Shelby.

Acc't of Bowen.

1 cattle 800

Memorandum of stock.	Block.	Pen.
Taken from	22	2
Yarded in		

Date, Oct. 3, 1885.

BUFFINGTON,
Weighmaster.

Endorsed.

***A. J. G.**
2c.
W. P. B.

800
2
16.00

E.

Kansas City Stock-Yards Company.

W. & H. Jameson.

Acc't of Bowen.

1 cattle 830

Memorandum of stock.	Block.	Pen.
Taken from	8	11
Yarded in		

Date, Oct. 2, 1885.

BUFFINGTON,
Weighmaster.

Endorsed.

*** Price, 2c.**
G. & C.

830
2.35
4150
2460
1660
19.50

* Words and figures printed in bold-face type in pencil in original.

782 E.

Kansas City Stock-Yards Company.

A. J. S. & Co. L. R. C. Co.

Acc't of Bowen.

12 cattle 10,070

Memorandum of stock.	Block.	Pen.
Taken from	12	10
Yarded in		

Date, Oct. 3, 1885.

BUFFINGTON,
Weighmaster.

Endorsed.

***10070** ✓
2¾
20140 ✓
5035 ✓
2517 ✓
276.92 ✓

Kansas City Stock-Yards Company.

M., M. & Co. Shelby.

Acc't of Bowen.

79 cattle 60,970

Memorandum of stock.	Block.	Pen
Taken from	22	2
Yarded in		

Date, Oct. 3, 1885.

BUFFINGTON,
Weighmaster.

Endorsed.

***A. J. G.**
1.75,
W, P. B.

60970
1¾
60970
30485
15242
1,066.97

* Words and figures printed in bold-face type in pencil in original.

E.

Kansas City Stock-Yards Company.

J. R. S. & Co. Bullard.

Acc't of Bowen.

1 cattle 1,000

Memorandum of stock. Block. Pen.

Taken from .....

Yarded in .....

Date, Oct. 2, 1885.

BUFFINGTON,
Weighmaster.

Endorsed.

*A. J. G.	1000
2c.	2
W. P. B.	
	20.00

783 Kansas City Stock-Yards Company.

J. R. S. & Co. L. R. C. Co.

Acc't of Bowen.

2 cattle 1,880

Memorandum of stock. Block. Pen.

Taken from .....

Yarded in .....

Date, Oct. 2, 1885.

BUFFINGTON,
Weighmaster.

Endorsed.

*A. J. G.	4)1800
2.50.	
W. P. B.	47.00

* Words and figures printed in bold-face type in pencil in original.

E.

Kansas City Stock-Yards Company.

A. J. S. & Co. A. Wilson.

Acc't of Bowen.

1	1	3 cattle	3,080
	1 2	7 "	7,400
		13 "	15,150
Q	Q		

Memorandum of stock.	Block.	Pen.
Taken from	11	9
Yarded in		

Date, Oct. 2, 1885.

BUFFINGTON,
Weighmaster.

Endorsed.

* A. J. G.	3080	7400 ✓	15150 ✓
3.40.	340 ✓	340	340
W. P. B.	1232	251600 ✓	6060
	924		4545
	10472 ✓		51510 ✓

E.

Kansas City Stock-Yards Company.

A. J. S. & Co. A. Wilson.

Acc't of Bowen.

Q	Q	2 cattle	1,900

Memorandum of stock.	Block.	Pen.
Taken from	11	9
Yarded in		

Date, Oct. 2, 1885.

BUFFINGTON,
Weighmaster.

* A. J. G.	1900 ✓
2.75.	2¾
W. P. B.	3800 ✓
	950
	475 ✓
	5225 ✓

* Words and figures printed in bold-face type in pencil in original.

784 EXHIBIT 19 of T. E. Gillespie's Testimony. K. A. B.

KANSAS CITY STOCK-YARDS, MO., ——— —, 188–.

A. J. Gillespie & Co. in Account with W. P. Bowen & Co.

1885.							
Aug.	22	To cash, bonus	4 00	Aug.	21	By cash, McF. & Co.	56 70
		" Bowen	20 00	Sept.	2	" d'ft.	4,390 66
	29	" "	20 00		4	" fr't, D. Thomson.	25 50
	31	" hay.	2 50			" McFarland	120 00
Sept.	2	" 32—41,130, 3.55	1,460 11			" R. & R.	112 50
		" 19—24,880, 3.95	982 76			" d'ft	13,000 00
		" 2—2,190, 3¾	84 85		5	" Wm. James, loss.	75 35
		" 16—21,300, 4¾	1,011 75		5	" sales, 1—1,130, 3c.	33 90
		" 2—2,360, 4¼	100 30			" " 1—1,820, 2c.	36 40
		" 19—22,260, 4.20	934 92			" cash, fr't Q., M. & Co.	175 00
		" telegrams	25 34			" " A. J. G. & Co.	40 00
		" exchange.	3 30			" d'ft	10,384 38
		" Wm. James, ½	104 81			" "	2,868 36
	3	" 1—1,100, 3¾	41 25			" "	1,000 00
		" 1—1,060, 3¾	39 75			" fr't, S. & Co.	273 00
		" 75—64,200, 2.90	1,809 60		7	" " G. & Co.	30 00
		" 36—41,060, 4¾	1,950 35		8	" Metcalf, M. & Co.	78 42
	4	" exc.	9 75		9	" fr't, Jones Bro.	39 50
		" on sale	5 00			" " "	100 00
		" 18—22,000, 4.80	1,056 00			" " Q., M. & Co.	720 00
		" 20—22,920, 3.80	870 96			" " McFarland	496 00
		" 20—23,660, 3.80	899 08			" d'ft	23,347 00
		" 1—1,070, 3c.	32 10		2	" sales, 2—2,190, 4¼	90 33
		" 20—25,700, 4.20	1,079 40			" cash, fr't, ba!	102 00
		" 1—1,780, 1¾	31 15		3	" " McCoy & N.	25 00
		" 59—73,270, 4.20	3,077 38				
		" 48—61,640, 4.20	2,588 88				
		" 219—281,480, 4.10	11,515 68				
	5	" 35—42,200, 4¼	1,793 50				
		" 1—1,130, 2¾	31 07				
		" exch	10 90				
		" fr't, McF. & Co.	53 00				
		" 1—1,200, 3¾	45 00				
		" 1—1,280, 3.80	48 64				
		" 17—21,700, 4½	976 50				
		" 1—1,060, 4	42 40				
		" Bowen	25 00				
	7	" hay	11 50				
	8	" T. J. R.	50 00				
		" 20—19,440, 3.70	719 28				
		" 4—4,590, 4c	183 60				
		" 6—7,740, 4½	348 30				
		" 20—26,600, 4.70	1,250 20				
		" shipper.	3 00				
	9	" exch	17 50				
		" 58—82,490, 5.35	4,413 21				
		For'd	39,783 57			For'd	57,619 50

785

		Forward	39,783 57			Bro't for'd	57,619 50
Sept.	9	To cash, 10—11,920, 4.50	536 40	Sept.	9	By sales, 6—8,510, 5½	486 05
		" 377—384,530, 2.70	10,382 31			" " 19—19,300, 3.70	714 10
		" 14—19,180, 5.00	959 00			" cost fr't fol. Dilingham	40 00
		" 54—72,840, 4.85	3,532 74			" " " A. J. G. & Co.	120 00
		" 41—55,170, 4.85	2,675 74			" " d'ft	4,131 56
		" 9—11,550, 4¼	490 87			" sales, 1—860, 3.30	28 38
	10	" 13—12,950, 2.90	375 55			" " 1—1,150, 4	46 00
		" 22—21,070, 3¼	684 77			" " 5—5,440, 4	217 60
		" 38—36,740, 3.40	1,249 16			" " 6—6,140, 3.85	236 39
		" 2—2,230, 2¾	61 32			" " 4—4,160 "	160 16
		" 10—8,350, 2.85	237 97		11	" cost fr't fol. M. McC.	40 00
		" 2—2,640, 4	105 60		12	" sales, 50—31,600, 3.45	1,590 45
		" 1—1,310, 3	39 30			" " 4—4,300, 3.65	156 95
		" 3—2,420, 2½	60 50			" cost fr't fol. Q., M. & Co.	75 00
		" 17—16,830, 3c.	504 90			" " " Thomson	25 00
		" 2—1,980, 2½	49 50			" " d'ft	8,636 70
		" 19—20,900, 3.40	710 60			" sales, 2—1,900, 3.40	64 60
		" 2—2,020, 2¾	55 55		15	" cash d'ft	11,648 13
		" 2—2,020, 3	60 60			" " fr't fol. G. & Co.	30 00
		" 1—870, 2¾	23 92			" sales, 19—19,780, 3.65	721 97
		" 2—2,270, 2.90	65 83		16	" cash d'ft	1,178 25
		" 7—5,700, 2.85	162 45			" " fr't fol. Bain	165 00
		" 1—650, 3.15	20 47		17	" sales, 24—23,960, 3.67½	880 53
		" 28—28,600, 3½	1,001 00			" " 28—20,200, 2¼	454 50
		" 1—1,320, 3½	46 20			" " 7—6,310, 3.40	214 54
		" 18—16,480, 3.60	593 28			" " 111—117,260, 3.30	3,869 58
		" 2—1,790, 2¾	49 22			" " 27—29,780, 3.55	1,057 19
		" 4—5,020, 3.60	180 72			" cash, fr't fol.	29 00

Exhibit 19 *of T. E. Gillespie's Testimony*—Continued.

1885.						
Sept. 10	To cash, 1—1,060, 4	42 40	Sept. 18	By cash, d'ft	20,000 00
	" shipper	3 00	19	" sales, 4—3,680, 3.20	117 76
	" exch	3 10		" " 14—12,160, 3¼	395 20
11	" "	3 00		" " 1 for	10 00
	" 1—880, 2½	22 00		" cash, fr't fol. C. L. & Co.	58 00
	" 9—9,730, 3 40	330 82		" " " " A.J.G.& Co.	640 00
	" 10—13,300, 4.60	611 80		" " " " "	160 00
	" 1—930, 2¾	25 57		" " " McFarland	29 00
	" 20—17,120, 2¾	470 80		" " " Stotter	708 00
	" 10—12,840 4.80	616 32		" " d'ft	7,593 60
	" 1—1,160, 4¼	49 30	21	" " 1 lump jaw	10 00
	" 15—18,500, 4½	832 50		" error, W. & H	25 80
	" 1—1,200, 4	48	22	" cash, fr't fol. Snider	1,000 00
	" 1—1,060, 4	42 40		" " d'ft	20,675 35
	" 2—2,730, 4¼	116 02	23	" fr't fol	275 00
	For'd	67,916 07		For'd	146,316 86
786					
	Bro't for'd	67,916 07		Bro't for'd	146,316 86
Sept. 12	To cash exch	6 50	Sept. 23	By cash fr't fol. Snider	200 00
	" 16—20,140, 4.60	926 40		" " d'ft	6,819 19
	" 4—4,150, 4	166 00		" sales, 18—21,040, 4¼	894 20
	" 17—22,220, 4.60	1,022 16	24	" cash d'ft	4,565 39
	" 1—1,290, 4	51 60			
	" 18—24,630, 4.40	1,083 72			
	" 34—48,360, 5.10	2,466 36			
	" 2—2,220, 1¾	38 85			
	" Bowen	25 00			
	" 5—6,710, 3.30	221 43			
	" for sale	15 00			
14	" 19—19,060, 3.60	686 16			
15	" exch	8 23			
	" 7—6,340, 3¾	237 75			
	" 27—32,930, 3¾	997 02			
	" 3—3,830, 4¼	162 77			
	" 35—46,680, 4.65	2,170 62			
	" 10—12,390, 4¼	526 57			
	" 56—74,300, 4.60	3,417 80			
	" 1—1,600, 3¾	60 00			
	" 54—73,790, 4.60	3,394 34			
	" 36—45,100, 4.35	1,961 85			
	" 2—2,070, 4	82 80			
16	" exch	87			
	" 17—21,950, 5	1,097 50			
	" 2—2,420, 4½	108 90			
17	" 35—26,900, 2½	672 50			
	" 104—109,600, 3.15	3,452 40			
	" 27—29,780, 3½	1,042 30			
	" 49—50,400, 2.70	1,360 80			
18	" 18—15,700, 3.15	494 55			
	" 7—8,870, 4.60	408 02			
	" 1—980, 3¾	36 75			
	" 8—8,730, 1¾	261 90			
	" 2—2,020, 1¾	35 34			
	" 7—9,390, 4½	422 55			
	" 13—15,500, 3¾	503 75			
	" 8—10,200, 4	408 00			
	" 14—18,680, 4¼	793 90			
	" 2—2,360, 4	94 40			
	" 15—18,940, 4.15	786 01			
	" 2—2,100, 3¾	78 75			
	" 1—860, 3c	25 80			
	" 27—25,420, 2¾	699 05			
	" 13—12,360, 2 80	346 08			
	" 19—20,280, 3¼	659 10			
		101,434 22			158,795 64
787					
	Bro't for'd	101,434 22		Bro't for'd	158,795 64
Sept. 18	To cash, 9—7,760, 2.55	197 88	Sept. 24	By cash, fr't fol. Pitm	110 00
	" 3—2,780, 2.65	73 67		" sales, 10—11,460, 4	458 40
	" 25—21,840, 2.90	633 36		" " 38—42,870, 3¼	1,393 27
	" 14—12,840, 2¾	353 10		" " 41—44,460, 3¼	1,444 95
	" 8—8,100, 2½	202 50	25	" cash, fr't fol. Ch. & Co.	161 70
	" 63—66,340, 3.15	2,089 71		" " 1 big jaw	22 04
	" 42—43,820, 3.15	1,380 33		" " d'ft	25,925 61
	" 62—64,800, 3.15	2,041 20		" sales, 47—53,400, 3	1,813 80
	" 57—70,540, 4.35	3,068 49		" less 1—950, 3	
	" 39—38,500, 3.15	1,212 75		" 59—74,830 } 4.20 bonus	3,201 86
	" 2—1,950, 2½	48 75			

Exhibit 19 *of T. E. Gillespie's Testimony*—Continued.

1885.							
Sept. 18	To cash, exch	15 00					
19	" "	5 70					
	" 1—1,180, 3	35 40					
	" F. J. R	50					
	" 19—23,300, 4.10	955 30					
	" Bowen	20 00					
	" 27—25,920, 2.60	673 92					
	" 46—46,120, 2.80	1,291 36					
	" 69—67,280, 2.80	1,883 84					
	" 93—91,280, 2.80	2,555 84					
	" 54—51,770, 2.80	1,449 56					
	" 90—78,540, 2.60	2,042 04					
21	" 4—3,700, 2½	92 25					
22	" exch	15 45					
	" 7—5,510, 2.35	129 48					
	" 2—1,470, 2.00	29 40					
	" 3—2,050, 2.35	48 17					
	" 2—1,950, 2.90	56 55					
	" 2—2,040, 3¼	66 30					
	" 111—89,900, 2.60	2,337 40					
	" 16—15,320, 2.90	444 28					
	" 237—237,850, 3	7,135 50					
	" 199—198,730, 3	5,961 90					
	" 62—62,420, 3.10	1,935 02					
	" 10—8,380, 2.00	167 60					
	" 1—670, 2	13 40					
	" 104—108,780, 3	3,263 40					
	" 19—22,230, 4.15	922 54					
	" 45—47,300, 3.10	1,466 30					
	" shipper	2 00					
23	" exch	5 10					
	" 4—4,400, 2.40	105 60					
	" 17—19,120, 3c	573 60					
	" 7—6,410, 2½	160 25					
	" 29—20,500, 2.15	440 75					
	For'd	149,086 26					193,327 27
788							
	Bro't for'd	149,086 26			Bro't for'd		193,327 27
Sept. 23	To cash, 13—13,550, 2.90	392 95	Sept. 26	By cash, fr't fol. Stotter			456 00
	" 4—4,510, 2.90	130 79		" " " Q., M. & Co.			480 00
	" 4—4,440, 3	133 20		" " " Snider			760 00
	" 1—1,230, 2	24 60		" " " "			80 00
	" 36—33,860, 2.90	981 94		" " d'ft			5,960 24
	" 3—3,830, 4.30	164 69		" sales, 11—7,530, 2.65			199 54
	" 3—2,300, 2	46 00		" " 4—4,160, 3¼			135 20
	" 2—2,600, 4.65	120 90	28	" cash, d'ft			5,114 03
	" 1—1,280, 3.75	48 00		" " fr't fol. Q., M & Co.			570 00
	" 9—11,940, 4.65	555 21		" " " Snider			243 00
	" 19—24,580, 4.95	1,216 71		" " bonus, W. & H			10 00
	" 10—9,900, 3	297 00	29	" " fr't fol. Q., M. & Co			40 00
	" 4—2,860, 2½	71 50		" " R. R. Co			761 97
24	" exch	3 29		" sales, 117—109,160, 3¼			3,547 70
	" 64—67,280, 3	2,018 40		" " 81—100;570, 4.30			4,324 51
	" 24—21,900, 2.60	569 40		" " 14—16,160, 3.65			589 84
	" 10—9,270, 2.60	241 02		" cash, d'ft			3,713 78
	" 1—1,150, 3	34 50		" " fr't fol. G. & Co			45 00
	" 1—1,280, 2	25 60	30	" " d'ft			6,231 10
	" 12—12,350, 3	370 50					
	" 27—24,990, 4.65	1,627 03					
	" 38—42,820, 3.30	1,390 48					
	" 41—44,660, 3.15	1,388 07					
	" 1—1,260, 3¼	40 95					
	" 2—3,520, 3	67 80					
	" exch	19 44					
	" 1 for	20 00					
	" 5—4,920, 2.70	132 84					
	" 19—21,860, 4.30	939 98					
	" 167—170,740, 3.10	5,292 94					
	" 20—21,390, 10.00, 2¾	577 47					
	" 16—15,780, 2.85	449 73					
	" 53—58,090, 3¼	1,887 92					
	" 6—5,140, 2½	128 50					
	" 2—1,880, 2.65	49 82					
	" 2 for	35 00					
	" 2 "	20 00					
	" 245—251,300, 3⅛	7,853 12					
	" 88—90,860, 3¼	2,839 37					
	" 66—67,610, 3⅛	2,112 81					
	" 138—124,070, 2.87½	3,567 00					
	" 27—18,520, 2.15	398 18					

Exhibit 19 *of T. E. Gillespie's Testimony*—Continued.

1885.							
Sept. 24	To cash, 115–100,970, 2.87½	2,902 88					
	" 8—7,350, 2.85	209 47					
	" 1—1,130, 1¾	19 77					
	For'd	190,503 03			For'd	226,589 18	
789							
	Bro't for'd	190,503 03			Bro't for'd	226,589 18	
Sept. 24	To cash 19—21,720, 4¼	923 10	Oct. 1		By cash, fr't fol. Q., M. & Co.	792 80	
	" 1—1,010, 3¾	37 87			" " Snider	600 00	
25	" 12—12,090, 3.10	374 79			" " "	280 00	
	" exch	4 47			" d'ft	19,505 62	
26	" 2—1,770, 2½	44 25					
	" 16—18,680, 3.80	709 84					
	" 1—1,100, 3	33					
	" 59—74,830, 4.20	3,142 86					
	" 5—5,660, 1.87½	106 12					
	" 11—12,250, $10 off, 2.30	271 75					
	" 4—5,280, 2.80	147 84					
	" 1—1,100, 3.65	40 15					
	" 49—38,540, 2.40	1,040 58					
	" 3—2,390, 2¼	53 10					
	" 2—2,380, 2¾	65 45					
	" 1—1,270, 3	38 10					
	" 1—790, 1¾	13 82					
	" 11—11,730, 295	346 03					
	" 1—1,200, 2¾	34 65					
	" 2—1,780, 2	35 60					
	" 1—890, 2½	22 25					
	" 1—1,230, 2¾	33 82					
	" 3—2,490, 2.68	64 74					
	" 6—5,980, 2.80	167 44					
	" 1—960, 2½	24 00					
	" 32—28,560, 2.80	799 68					
	" 53—48,700, 2.80	1,363 60					
	" 11—9,000, 280	252 00					
	" 1—960, 1¼	11 40					
	" 2—1,940, 2¾	53 35					
	" 24—19,200, 2.65	508 80					
	" 1 for	10 00					
	" Bowen	20 00					
28	" 14—13,550, 2¾	372 62					
	" 12 @ $10.00 each	120 00					
	" 9—8,850, 2.70	238 95					
	" 167—135,586, 2.80	3,794 00					
	" 1—1,110, 2.40	26 64					
	" 31—38,360, 4¼	1,630 30					
	" 1—1,270, 3	38 10					
	" 20—22,600, 3.35	757 10					
	" 5—5,130, 3	153 90					
	" exch	3 82					
	" "	50					
	" 2—2,480, 3.35	83 08					
	" 1 for	13 00					
	For'd	28,529 49			For'd	247,767 60	
790							
	Bro't for'd	208,529 49			Bro't for'd	247,767 60	
Sept. 29	To cash, 60—66,880, 4.17½	2,792 24	Oct. 1		By cash, fr't fol. Yard Co.	300 00	
	" 17—14,980, 2.85	426 93	3		" " " M'tg'y, W. & Co.	160 00	
	" 1—850, 2.70	22 95			" " " Snider	40 00	
	" 1—1,020, 2½	25 50			" " d'ft	691 70	
	" 1—870, 2.30	20 88			" sales, 9—9,880, 3.80	375 44	
	" 18—22,940, 4¼	974 95			" 2—1,530, 3c	45 90	
	" 1—1,240, 4.10	50 84					
	" 17—20,970, 3.80	796 86	5		" cash dep	6,217 01	
	" 12—9,380, 2.60	243 88	6		" " "	19,407 36	
	" 1—1,430, 4¼	60 77			" sales, 1—1,160, 3.65	42 34	
	" 1—940, 2¼	21 15			" 5—5,140, 3.40	174 76	
	" 1—1,000, 2.70	27 00			" 1—1,170, 2.60	30 42	
	" 1—1,000, 3	30 00			" 2—2,720, 3¾	92 00	
	" 3—2,580, 2	51 60					
	" 123–114,540, 2.87½	3,293 02					
30	" exch	7 35					
	" T. J. R.	50 00					
	" 133–162,660, 4	6,506 40					
	" 1—1,080, 2¾	29 70					
	" fr't Q., M. & Co	25 00					
	" 1—1,160, 4	46 40					
	" 2—1,860, 2	37 20					
	" 2—1,860, 2.10	39 06					

Exhibit 19 *of T. E. Gillespie's Testimony*—Continued.

1885.							
Sept.	30	To cash, hay	50				
		" 75—322,880, 2½	8,072 00				
		" telegrams	36 74				
		" 1—800, 2.40	19 20				
		" 6—4,930, 2.40	118 32				
		" 102—101,870, 2.90	2,954 23				
		" 85—85,610, 2.90	2,482 69				
		" 82—81,735, 2.90	2,370 31				
		" 78—79,790, 2.90	2,313 91				
		" 92—92,120, 2.90	2,671 48				
		" 9—9,800, 3.70	362 60				
		" exch	14 60				
		" 1 for	12 00				
		" 2—1,900, 2¾	52 25				
		" 3—3,080, 3.40	104 72				
		" 7—7,400, 3.40	251 60				
		" 13—15,150, 3.40	515 10				
		" 2—1,880, 2½	47 00				
		" 1—1,000, 2	20 00				
		For'd	246,528 42				
791							
		Bro't for'd	246,528 42			Bro't for'd	275,344 53
Oct.	3	To cash, 79—60,970, 1¾	1,066 95	Oct.	10	By cash, fr't fol. Snider	40 00
		" shipper	20 00				
		" 1—830, 235	19 50				
		" 12—10,070, 2¾	276 92				
		" Bowen	30 00				
		" exch	55				
		" hay	15 25				
	5	" F. J. R.	50 00				
		" 1—800, 2.00	16 00				
		" ret'd d'ft & fees	*6,233 71				
	6	" " "	*19,505 62				
	8	" " "	*700 94				
			274,463 86				
		To commission on 786 cattle sold at Kansas City	384 00				
			274,847 86				
		†To balance	536 67				
			275,384 53				275,384 53

‡D'ft returned not paid	**6,233 71**		
	19,505 26		
	709 94		
	26,440 27		
Cr	**536 67**		
D'ft not paid	**25,903 60**	**133 C., nett**	**5,880 25**
		810	**16,519 69**
		122	**1,857 27**
			24,257 21

792 EXHIBIT 20 to T. E. Gillespie's Testimony.

$3,234.34. KANSAS CITY, KS., *Oct.* 5, 1885.

At 10 days' sight pay to the order of A. J. Gillespie & Co. thirty-two hundred & thirty-four $\frac{34}{100}$ dollars, value received, and charge to account of—

RAPPAL, SONS & CO.

To Rappal, Sons & Co., U. S. Y'ds, Chicago, Ills.

* Not paid.
† In red ink in original.
‡ Words and figures printed in bold-face type in pencil in original.

Defendant's Exhibit 1 to W. H. Boprey's Testimony.

Memorandum Acc't Rappal, Sons & Co. with Union Stock-Yard Nat. Bank.

1885.	Checks.	Deposits.	Balance.	1885.	Checks.	Deposits.	Balance.
Jan'y 1			2,785 25	Feb'y 18	5,924 98	1,730 86	10,738 52
2	9,704 41	10,707 74	1,781 92	19	4,054 18	11,388 40	3,404 30
3	4,734 55	5,088 82	1,427 65	20	6,610 19	9,113 68	900 81
5	11,259 50	11,924 46	762 69	21	2,788 13		3,688 94
6	3,420 12	4,736 61	553 80	24	19,253 07	14,652 01	8,290
7	5,389 28	2,622 11	2,213 37	25	8,579 81	7,891 87	8,977 94
8	4,988 59	8,236 92	1,034 96	26	2,659 08	18,356 51	6,719 49
9	5,265 03		4,230 07	27	13,877 74	8,095 78	937 53
10	835 89	2,271 48	2,794 48	28	6,978 48	2,001 97	4,038 98
12	5,406 97	5,258 20	2,943 25	M'ch 2	20,601 16	15,455 54	9,184 60
13	5,854 81	4,106 47	4,694 59	3	6,074 47	12,035 64	3,223 43
14	2,355 77	5,248 96	1,798 40	4	6,518 95	2,834 11	6,908 27
15	5,397 20	5,309 80	1,885 80	5	982 38	9,443 92	1,553 27
16	541 20	1,361 15	1,065 85	6	7,711 63	3,695 81	2,402 55
17	1,405 56	1,558 57	912 84	7	38 40		2,500 95
19	3,462 41	2,491 67	1,883 58	9	8,539 25	5,704 93	5,335 27
20	9,209	8,856	2,230 58	10	997 98	4,315 50	2,017 75
21	7,336 89	15,435 14	5,861 67	11	877 13	1,567 52	1,327 36
22	11,190 82	4,820 15	509	12	1,640 79	914 91	2,053 24
23	4,512 78	7,427 63	2,405 85	13	5,766 78	1,443	6,377 02
24	16,032 40		13,626 55	14	1,625 38	1,163 22	6,839 18
26	10,388 52	21,289 58	2,725 49	16	3,742 56	5,140 53	5,441 21
27	3,437 14	6,774 85	612 22	17	3,071 02	18,029 22	9,516 99
28	7,757 10	6,782 51	363 37	18	1,461 37	2,181 41	10,237 03
29	11,458 78	10,514 58	1,306 57	19	18,388 56	6,080 29	2,071 24
30	4,058 81	9,461 09	4,095 71	20	4,957 02	2,796 77	4,231 49
31	8,102 35	1,520 76	2,485 88	21	1,202 29	1,182 48	4,251 30
Feb'y 2	3,494 54	3,458 65	2,521 77	23	10,030 79	11,366 92	2,915 17
3	2,150 95	4,498 28	174 44	24	1,607 43	2,353 67	2,168 93
4	5,059 90	828 26	4,406 08	25	3,682 50	2,403 12	3,448 31
5		1,682 53	2,723 55	26	5,673 22	7,079 33	2,042 20
6	1,243 03	3,724 12	242 46	27	8,860 97	4,584 60	6,318 58
7	5,476 21	5,401 09	317 58	28	400	3,946 57	2,772
9	14,813 70	9,227 40	5,903 88	30	11,582 19	11,389 03	2,965 16
10	50	336 99	5,616 89	31	7,687 83	11,622 79	969 80
11	13 39		5,630 28	Ap'l 1	8,619 91	10,557 01	2,906 90
12	8,724 01	2,132	12,222 29	2	15,310 28	14,535 21	2,131 83
13	121 50	10,240 96	2,102 83	3	12,282 32	10,577 64	427 15
14	1,425	8,669 27	5,141 44	4	9,786 02	2,902 26	6,456 61
16	8,191 52	3,357 71	307 63	6	5,090 54	8,670 76	2,876 39
17	9,446 23	2,594 20	6,544 40	8	11,869 09	13,526 26	1,219 22

1885.	Checks.	Deposits.	Balance.	1885.	Checks.	Deposits.	Balance.
Ap'l 9	4,147 17	3,150 19	2,216 20	May 26	6,508 16	32,244 89	1,761 06
10	7,288 74	6,736 98	2,707 96	27	37,114 36	12,603 22	22,750 08
11	10,293 70	7,805	5,256 66	28	26,550 45	28,928 25	20,372 28
13	8,933 63	19,985 20	5,794 91	29	7,167 23	21,020 72	6,518 79
14	11,931 86	7,611 29	1,474 34	June 1	26,395 08	26,109 11	6,804 76
15	5,048 30	30	3,573 66	2	5,050 03	8,302 04	3,552 75
16	12,720 59	21,421 66	5,127 41	3	25,954 42	18,737 57	10,769 60
17	20,708 86	18,105 44	2,523 99	4	10,077 77	12,468 92	8,378 45
18	12,927 92	11,926	1,522 07	5	14,595 82	13,675 23	9,299 04
20	5,356 92	12,290 88	8,456 03	6	12,616 23	235 41	21,679 80
21	13,111 71	4,047 51	608 17	8	19,112 80	21,815 22	18,979 44
22	15,955	11,132 55	5,430 92	9	5,041 74	13,056 96	10,962 22
23	33,038 12	10,552 49	27,916 25	10	12,216 91	8,201 35	14,977 78
24	21,893 11	36,711 22	13,008 14	11	8,532 51	6,826 37	16,683 92
25	9,878 34	2,989 15	10,087 33	12	12,498 82	19,099 96	10,082 78
27	21,383 54	35,370 43	3,000 44	13	984 26		11,004 04
28	13,505 77	19,918 40	352 19	15	22,081 15	25,425 94	7,719 25
29	6,189 40	2,894 61	2,042 60	16	5,682 67	2,813 25	10,588 67
30	6,985 40	2,506 24	7,421 76	17	24,531 91	25,759 04	9,361 54
May 1	13,919 91	4,441 91	10,899 76	18	32,000	28,330 87	10,030 67
2	6,762 12	19,352 58	4,309 30	19	37,425 70	47,702 52	2,753 85
4	24,633 07	28,816 20	120 17	20	2,039 30	646 38	4,146 77
5	5,006 48	11,849 71	6,717 06	22	31,123 44	21,311 44	13,958 77
6	9,664 93	8,491 90	5,544 03	23	6,283 32	16,275 03	3,907 06
7	13,196 09	9,317 65	1,665 59	24	6,438 67	4,759 36	5,646 37
"	88		1,664 71	25	17,936 58	26,990 24	3,407 29
8	21,962 75	22,454 49	2,156 45	26	20,349 57	8,635 52	8,306 76
9	4,828 28	2,775 86	104 03	27	13,608 55	14,577 99	7,337 32
11	17,712 19	13,084 25	4,523 91	29	49,993 44	31,406 23	25,924 53
12	2,969 11	5,898 47	1,594 55	30	2,327 62	21,708 28	6,543 27
13	2,886 52	748 39	3,732 68	July 1	40 81		6,584 08
14	19,301 87	9,639 38	13,395 17	2	48,401 20	46,408 91	8,576 37
15	15,967 60	10,249 43	19,122 35	3	39,959 83	24,121	24,415 20
16	11,884 18	32,806 13	1,799 60	6	33,447 45	40,394 41	17,468 24
18	42,899 89	24,256 12	16,844 17	7	4,619 40	13,806 06	8,281 58
19	3,349 17	25,371 91	5,177 67	8	26,251 30	22,702 99	11,829 89
20	18,050	8,724 92	4,147 41	9	25,837 88	24,045 38	13,622 39
21	21,618	22,879 62	2,885 79	10	29,050 52	33,597 15	9,075 76
22	28,229 57	9,960 04	21,455 32	11	10,058 80		19,134 56
							4
23	9,923 89	25,348 23	5,730 98	13	25,334 43	37,028 26	7,436 73
25	48,662 77	30,418 08	23,975 97	14	6,123 04	4,324 67	9,239 10

1885.	Checks.	Deposits.	Balance.	1885.	Checks.	Deposits.	Balance.
July 15	1,696 23	3,933 85	7,001 48	Sept. 2	18,588 58	9,083 21	13,205
16	27,435 04	15,489 35	18,947 17	3	7,614 65	25,815 56	4,935 91
17	15,044 69	23,854 77	10,137 09	4	29,219 31	8,452 68	15,830 72
18	1,480	762	10,855 09	5	1,784 86	1,708 92	15,906 66
20	13,085 15	14,649 03	9,891 21	7	13,376 73 10	13,032 48	16,250 91 10
21	5,484 32	8,939 74	9,435 79	8	18,088 58	13,850 78	20,488 71
22	25,178 10	19,811 70	11,802 19	10	4 50	15,718 09	4,785 12
23	6,270 15	19,424 14	1,351 80	11	26,032 90	5,621 60	25,196 42
24	16,946 30	10,530 56	5,063 94	12	18,733 84	15,932 02	27,998 24
25	14,871 29	19,976 79	3,958 44	14	12,189 32	22,897 51	10,290 05
27	36,254 24	21,524 48	18,088 20	15	2,430 93	998 58	17,722 40
28	12,259 98	14,761 21	16,186 97	16	49 25	813 95	16,957 70
29	18,228 77	19,831 10	14,584 04	17	289 77	16,319 27	928 20
30	11,412 72	22,174 62	3,823 24	18	16,557 14	2,448 50	15,036 85
31	8,614 03	781 69	11,655 58	19	6,872 53	1,449 36	20,400 01
Aug. 1	13,139 65	9,091 90	15,703 33	21	22,158 39	18,649 97	23,968 43
3	1,603 43	7,707 29	9,599 47	22	7,613 60	12,357 32	19,224 71
4	4,016 33	1,740 18	11,875 62	23	572 14	8,274 95	11,521 90
5	784 66		12,660 28	24	6,859 55	862 03	17,519 42
6	4,454 21	10,605 88	9,508 61	25	32,530 43	34,318 61	15,731 24
7	15,119 58	8,198 41	13,429 78	26	10,368 08	5,776 81	20,322 51
10	19,237 26	21,311 28	11,355 70	28	31,885 85	32,438 52	19,769 84
11	1,059 07	1,022 70	11,392 13	29	6,122 84	14,322 29	11,570 39
12	24,347 16	24,023 93	11,715 36	30	15,327 95	11,779 72	15,118 02
13	17,258 22	1,125 61	27,847 97	Oct. 1	11,901 20	8,097 61	18,922 21
14	14,141 63	33,191 80	8,797 80	2	6,241 52	6,708 84	18,454 89
15	12 511 61	13,389 52	7,919 89	3	3,699 91	23,290 83	1,136 03
17	6,603 75	6,960 34	7,563 30	5	7,532 92	6,444 62	47 73
18	4,904 84	2,002 91	10,465 23	6	10,224 73	10,179 89	2 89
19	9,943 92	10,473 48	9,935 07	8	3 15	26	" " "
20	12,638 89	6,460 65	10,113 91	9	4,006 73	4,006 73	" " "
21	30,416 32	14,138 38	32,391 85				
22	8,934 86	23,228 10	18,098 61				
24	18,067 18	14,119 81	22,045 98				
25	26,049 03	19,303 17	28,791 84				
26	11,276 91	31,834 83	8,233 02				
27	8,204 17	20,532	4,093 91				
28	11,053 94	7,347 99	387 96				
29	1,830 25	602 60	858 69				
31	36,031 44	23,321 80	13,548 33				
Sept. 1	9,620 50	19,409 20	3,759 93				

[Written across the face in black ink:] A. J. Gillespie & Co., live stock commission. [In red ink:] Copy. Protested for non-acceptance Oct. 7, 1885. C. J., N. P. Protested for non-payment Oct. 20, '85. Edmon V. E. Baker, notary public. Copy.

(Endorsed:) A. J. Gillespie & Co. Send it back. F. J. R., Jr. No. funds. F. J. R. Jr.

793 EXHIBIT 21 to T. E. Gillespie's Testimony

Copy.

$3,000. KANSAS CITY, KAS., *Oct.* 5, 1885.

Sixty days after date we promise to pay to the order of A. J. Gillespie & Co. three thousand dollars, at Kansas City Stock-Yards Bank, value received, with interest from date, at the rate of 10 per cent. per annum, until paid.

(S'g'd) RAPPAL, SONS & CO.

(Endorsed:) A. J. Gillespie & Co.

794 EXHIBIT 22 to T. E. Gillespie's Testimony.

Copy.

PAOLA, KAN., *August* 29, 1885.

Six months, on or before, after date I promise to pay to the order of A. J. Gillespie & Co., at Armour Brothers' Banking Company, Kansas City, Mo., three thousand dollars, value received, with interest at the rate of 10 per cent. per annum from date until paid.

$3,000; due Mar. 4.

(S'g'd) W. P. BOWEN.

Secured by 2d mortgage on 240 — land.

Endorsement: Pay to Rappal, Sons & Co. or order, without recourse. A. J. Gillespie & Co. Rappal, Sons & Co.

(Here follows Defendants' Exhibit 1 to W. H. Boprey's testimony folios 795 and 796, marked sheet 1, 2, and 3.)

797 EXHIBIT 2 of F. J. Rappal Jr.'s Testimony.

W. P. Bowen & Co. in Ac. with A. J. Gillespie & Co.

July	1st	To balance	23,067 73	July	2	By cash, fr't	140 40
		40 cattle, 50,850, 5.40	2,745 90		3	" " "	27 00
		51 " 69,240, 5.42½	3,756 26			" " reb. switching	96 00
		17 " 19,070, 5.20	991 64			" " 2 cattle	112 00
		17 " 21,070, "	1,095 64		6	" R., S. & Co., 185 cattle	11,734 07
		39 " 48,480, 5.40	2,617 92			" " 173	9,967 60
		11 " 13,730, 5.30	727 69			" cash, fr't	18 00
		2 " 2,870, "	152 11		7	" " "	48 00
		3 " 3,700, 4.90	181 30		8	" " "	44 00
		2 " 2,450, 5c	122 50			" " "	25 00
	2	exc	20 26			" " "	40 00
		shipper	21 35		9	" R., S. & Co., 329 cat	20,936 15
	3	18 cattle, 24,320, 5¼	1,276 80			" " 191 "	11,626 41
		shipper	18 00				
		"	5 00				
		"	38 00				
		39 cattle, 46,990, 5.10	2,396 49				
		37 " 43,390, "	2,212 89				
		21 " 24,780, "	1,263 78				
		36 " 44,440, 5.05, 10 off	2,234 22				
		2 " 2,510, 4¾	119 23				
		63 " 77,630, 5.15	3,997 95				
		2 " 2,110, 4.40	92 84				
		8 " 9,520, 4.85	461 72				
		2 " 1,950, 4.35	84 82				
		14 " 15,800, 4.85	766 30				
		66 " 85,140, 5.20	4,427 28				
		2 " 2,350, 4½	105 75				
		15 " 19,130, 5c	956 50				
		18 " 20,530, 4.80	985 44				
	6	exchange	32 67				
		cash, F. J. R.	50 00				
		" W. P. B.	20 00				
		18 cattle, 16,340, 3½	571 90				
		Phalan, ½ prof., 54c	50 21				
	7	shipper	20 00				
		34 cattle, 41,800, 5¼	2,194 50				
		2 " 2,640, 4.60	121 44				
		1 " 1,520, 4.	60 80				
		25 " 29,240, 5.20	1,530 48				
		11 " 12,250, 4¾	581 87				
		1 " 1,010, 4¼	42 92				
		5 " 5,450, 5c	272 50				
		1 " 840, 4.	33 60				
		36 " 45,600, 5.20	2,371 20				
		2 " 2,330, 5c	116 50				
		For'd	65,003 90				54,815 63
798							
July	7	To balance for'd	65,003 90	July	10	By bal. for'd	54,815 63
		38 cattle, 49,670, 5½	2,731 85		"	cash, fr't	78 00
		2 " 2,240, 4.70	105 28		"	R., S. & Co., 22 cattle	734 91
		40 " 44,670, 4.75	2,121 82		11	" 188 do.	11,048 71
	8	11 do., 1,308, 4.90	640 92		13	cash, fr't	50 50
		34 do., 44,000, 5.10	2,244 00		"	" "	312 00
		71 do., 96,265, 5¼ & $2	5,055 91		14	" "	66 00
		cash, shipper	20 00		15	R., S. & Co., 128 cat	8,346 48
	9	exc	40 00		"	" 235 "	12,218 72
		hay, R. & P.	6 00		"	cash, fr't	150 00
		1 cattle, 1,160, 4½	52 20		"	" "	21 00
		1 do., 1,070, 4½	48 15		17	Wm. James, loss on stillers	96 70
		3 do., 3,920, 4.90	192 08		"	P. Phalan, do.	48 35
		13 do., 18,400, 5¼	966 00		"	R., S. & Co., 63 cattle	1,898 95
	10	exchange	1 11				
		shipper	20 00				
		do.	2 00				
		22 cattle, 27,040, 4.90	1,324 96				
		2 " 3,370, 5.60	188 72				
		5 " 6,510, 5c	325 50				
		21 " 19,690, 4.40	866 36				
		2 " 2,070, 4.30	89 01				
		42 " 43,420, 4.65	2,019 03				
		22 " 22,370, 4½	1,006 65				
		19 " 21,430, 4½	946 35				
		4 " 4,550, 4.35	197 92				
		18 " 21,430, 4¾	1,017 92				
		6 " 6,780, 4.80	325 44				

Exhibit 2 of F. J. Rappal Jr.'s Testimony—Continued.

July	10	To 4 cattle, 4,650, 4¼	197 62				
		2 " 2,080, "	88 40				
		14 " 15,160, 4½	682 20				
		35 " 40,000, 4.85	1,940 00				
		exchange	16 63				
		cash, shipper	10 00				
		W. P. Bowen	20 00				
		1 cattle, 960, 4.65	44 64				
	13	5 do., 4,260, 3c	127 80				
		58 do., 59,620, 3.70	2,205 94				
		shipper	14 00				
	14	do.,	10 00				
		107 cattle, 127,630, 4.90	6,253 87				
		55 do., 71,140, 5c	3,557 00				
		18 do., 22,480, 5.20	1,168 96				
		shipper	10 00				
		14 cattle, 16,790, 490	822 78				
		For'd	104,746 85			For'd	89,885 95
799							
July	14	To balance for'd	104,746 85	July	18	By am't for'd	89,885 95
		" 57 cattle, 66,530, 5.10	3,393 03			" cash, fr't	26 00
		75 do., 87,300, 5.15	4,495 95			" " "	15 00
		54 do., 70,470, 5¼	3,699 67			" " "	58 00
		16 do., 20,730, 5.20	1,077 96		20	" R., S. & Co., fr't	15 00
		2 do., 2,940, 5c	147 00			" R., S. & Co., 217 cattle	13,446 72
	15	exchange	30 97			" " 180 "	10,258 61
		cash, F. J. R	50 00			" " 94 "	2,414 71
		3 cattle, 3.500, 5	175 00			" cash, fr't	116 00
		17 " 21,980, 5¼	1,153 95		22	" R., S. & Co., 145 cattle	6,866 47
		16 " 19,680, 4.60	962 05		23	" " 164 "	6,159 90
		1 " 1,420, 4.00					
		57 " 66,020, 4.80	3,168 96				
	16	2 " 2,485, 4.35	107 88				
		18 " 22,820, 4.90	1,118 18				
		shipper	6 00				
		14 cattle, 15,930, 4.35	692 95				
	17	James' loss on car bulls	62 20				
		exchange	2 86				
		18 cattle, 23,230, 5c	1,161 50				
		11 do., 13,560, 4.90	664 44				
		22 @ 25.00 each	506 00				
		5 cattle, 5,660, 4.90	277 34				
		1 do., 1,360, 4	66 64				
		1 do., 1,210	59 29				
		1 " 990, 4c	39 60				
		20 " 22,650, 4.40	996 62				
		4 " 5,460, 5¼	286 65				
		8 " 8,780, 4.35	381 93				
		21 " 19,300, 2.65	511 45				
	18	cash, shipper	50 00				
		" on ac	30 00				
		1 cattle, 880, 2c	17 60				
		41 " 29,750, 2½	743 75				
		2 " 1,920, 2.80	53 76				
		6 " 4,880, 2.60	126 88				
		78 " 87,980, 5.10	4,486 98				
		9 " 7,720, 2½	193 00				
		2 " 2,000, 3¼	65 00				
		23 " 15,470, 2.60	402 22				
		exc	43 85				
	20	44 cattle, 40,750, 3.65	1,487 38				
		46 " 43,150, "	1,574 97				
		hay, $3.50; cash 21st, 20.00	23 50				
	21	57 cattle, 69,430, 4.70	3,263 21				
		18 " 22,380, 4.75	1,063 05				
			143,668 10				129,262 36
800							
July	21	To am't forward	143,668 10			By am't for'd	129,262 36
		" exc	10 35	July	27	" R., S. & Co., 90 cattle	2,902 76
	22	shipper	19 00			" 182	11,031 25
		14 cattle, 15,550, 4.70	730 85			" rebate exchange	650 66
		7 " 8,900, 5c	445 00			" " fr't	45 00
		14 " 18,390, 4.72	868 92			" " "	1,924 60
		108 " 132,940, 5c. & $5	6,647 00		27	" R., S. & Co., 37 cattle	2,207 72

Exhibit 2 of F. J. Rappal Jr.'s Testimony—Continued.

July	23	To exc	9 22	July	28	By rebate fr't	1,022 60
		17 cattle, 24,180, 5.10	1,233 18			" "	52 00
		1 " 1,410, 4¾	66 97		29	" R., S. & Co., 212 cattle	3,058 60
		1 " 1,300, 3.90	50 70			" " 170 "	4,998 06
		cash F. J. R	50 00			" " 138	4,051 68
		9 cattle, 66,090, 4	2,643 60			" James' ½ loss 144 c	134 43
	24	56 " 5,700, 3.20	182 40		31	" R., S. & Co., 220 cattle	9,580 37
		106 " 102,550, 3	3,076 50			" sales 2 "	100 35
		160 " 162,430, 3½	5,685 05			" R., S. & Co., 53 "	3,216 37
		53 " 52,100, 3 15	1,041 15			" " 575 "	14,121 17
		140 " 140,540, 3.40, 10 off	4,768 36			" James' ½ loss	98 02
		1 " 1,200, 4.85	58 20				
		18 " 19,590, 4½	881 55				
		1 " 1,340, 4	53 60				
	25	exc	7 00				
		1 cattle, 1,080, 2¾	29 70				
		1 " 1,070, 4	42 80				
		cash	20 00				
		shipper	5 00				
		17 cattle, 16,940, 3.65	618 31				
		9 " 11,360, 4.80	545 28				
		18 " 23,550, 5	1,177 50				
		19 " 22,930, 5	1,146 50				
		13 " 13,710, 4½	610 95				
	27	exc	1 10				
		shipper	3 00				
		18 cattle, 25,300, 5.15	1,302 95				
		18 " 23,310, "	1,200 46				
		561 " 499,050, 3	14,971 50				
		9 " 7,800, 2½	195 00				
		2 " 1,780, "	44 50				
		14 " 16,570, 4¼	704 22				
		shipper	40 00				
	28	"	36 00				
		exc	6 00				
		3 cattle, 3,560, 4¼	151 30				
		2 " 2,050, 2.90	59 45				
		1 " 1,620, 1¾	28 35				
	30	shipper, $29; do. $20	49 00				
			195,791 57				188,458 00
801							
July	30	To am't for'd	195,791 57	July	31	By am't for'd	188,458 00
		60 cattle, 81,990, 4¾	3,894 52	Aug.	1	" sales of cattle	314 66
		112 " 134,000, 4.30	5,762 00			" cash, Leavenworth, 2 cattle	52 66
	31	exc	4 80				
		shipper	30 00		5	" R. S. & Co., 92 cattle	5,111 55
		exc	8 66			" " 92 "	5,600 48
Aug.	1	11 cattle, 12,280, 4½	552 60			" Rebate fr't	25 00
		cash, shipper	4 00		8	" R. Sons, 71 cattle	4,329 56
		" on ac	25 00			" *balance charged Rappal, Sons & Co	7,025 28
		9 cattle, 9,680, 4¼	411 40				
	4	1 " 1,020, 4¼	43 35				
		34 " 43,100, 4.80	2,068 80				
		1 " 960, 4¼	40 80				
		35 " 45,270, 4.80	2,172 96				
		1 " 1,130, 4.40	49 72				
		shipper	18 00				
	5	exc	5 35				
	8	shipper	8 00				
	10	exchange	2 16				
	11	shipper	20 00				
	12	hay	4 00				
			210,917 69				210,917 69
		To bal. charged R. Sons & Co	7,025 28				

* In red ink in original.

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Exhibit 3 to F. J. Rappal Jr.'s Testimony.

Kansas City, Kan., —— —, —.

Mess. W. P. Bowen & Co. in Ac. with A. J. Gillespie & Co.

1885.							
Aug. 22	To cash, bonus		4 00	Aug. 21	By cash, McF. & Co		56 70
"	" Bowen		20 00	Sept. 2	" d'ft		4,390 66
29	" "		20 00	4	" fr't, D. Thomson		25 00
31	" hay		2 50		" " McFarland		120 00
Sept. 2	" 32—41,130, 3.55	1,460 11			" " Rogers & R		112 50
"	" 19—24,880, 3.95	982 76			" " d'ft		13,000 00
"	" 2—2,190, 3¾	84 85		5	" Wm. James, loss		75 35
"	" 16—21,300, 4¾	1,011 75			" sales, 1—1,130, 3		33 90
"	" 2—2,360, 4¼	100 30			" " 1—1,820, 2		36 40
"	" 19—22,260, 4.20	934 92			" cash, fr't, Quinlin, M. & Co		175 00
"	" telegrams	25 34			" cash, fr't, A. J. Snider & Co		40 00
"	" exch	3 30			" cash, d'ft		10,384 38
"	" Wm. James, ½	104 81			" "		2,868 36
3	" cash, 1—1,100, 3¾	41 25			" "		1,000 00
"	" 1—1,060, 3¾	39 75			" fr't, Snider & Co		273 00
"	" 75—64,200, 2.90	1,809 60			" " Gillespie & Co		30 00
"	" 36—41,060, 4¾	1,950 35		7	" cash, Metcalf, M. & Co		78 42
4	" exch	9 75		8	" fr't, Jones Bros		39 50
"	" on rate	5 00		9	" " "		100 00
"	" 18—22,000, 4.80	1,056 00			" " Quinlin & Co		720 00
"	" 20—22,920, 3.80	870 96			" cash, fr't, McFarland		496 00
"	" 20—23,660, 3.80	899 08			" d'ft		23,347 00
"	" 1—1,070, 3	32 10		2	" sale-, 2—2,190, 4¼		90 33
"	" 20—25,700, 4.20	1,079 40		2	" cash, fr't fol		102 00
"	" 1—1,780, 1¾	31 15		3	" McCoy & N		25 00
"	" 59—73,270, 4.20	3,077 38					
"	" 48—61,640, 4.20	2,588 88					
"	" 219—281,480, 4.10	11,515 68					
5	" 35—42,200, 4¼	1,793 50					
"	" 1—1,130, 2¾	31 07					
"	" exch	10 90					
"	" fr't, McF. & Co	53 00					
"	" 1—1,200, 3¾	45 00					
"	" 1—1,280, 3.80	48 64					
"	" 17—21,700, 4½	976 50					
"	" 1—1,060, 4	42 40					
"	" Bowen	25 00					
7	" hay	11 50					
8	" F. J. R	50 00					
11	" 20—19,440, 3.70	719 28					
"	" 4—4,590, 4	183 60					
6	" 6—7,740, 4.50	348 30					
"	" 20—26,600, 4.70	1,250 20					
"	" shipper	3 00					
9	" exch	17 50					
"	" 58—82,490, 5.35	4,413 21					
	For'd	39,783 57				57,619 50	

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	Bro't for'd	39,783 57			Bro't for'd	57,619 50	
Sept. 9	To cash, 10—11,920, 4.50	536 40		Sep. 9	By sales, 6—8,510, 5½	468 05	
"	" 377—384,530, 2.70	10,382 31		"	" 19—193,000, 3.70	714 10	
"	" 14—19,180, 5.00	659 00		10	" cash fol. fr't, Fothingham	40 00	
"	" 54—72,840, 4.85	3,532 74			" cash fol. fr't, Snider & Co	120 00	
"	" 41—55,170, 4.85	2,675 74			" cash fol. fr't, d'ft	4,131 56	
"	" 9—11,550, 4¼	490 87			" sales, 1—860, 3.30	28 38	
10	" 13—12,950, 2.90	375 55			" " 1—1,150, 4	46 00	
"	" 22—21,070, 3¾	684 77			" " 5—5,440, 4	217 60	
"	" 38—36,740, 3.40	1,249 16			" " 6—6,140, 3.85	236 39	
"	" 2—2,230, 2¾	61 32			" " 6—4,160, "	160 16	
"	" 10—8,350, 2.85	237 97		11	" cash fol. fr't, Metcalf, M. & Co	40 00	
"	" 2—2,640, 4	105 60		12	" sales, 50—31,600, 3.45	1,590 45	
"	" 1—1,310, 3	39 30			" " 4—4,300, 3.65	156 95	
"	" 3—2,420, 2½	60 50			" cash fol. fr't, Quinlin, M. & Co	75 00	
"	" 2—1,980, 2½	49 50			" cash fol. fr't, Thomas	25 00	
"	" 17—16,830, 3	504 90			" " d'ft	8,636 70	
"	" 19—20,900, 3.40	710 60			" sales, 2—1,900, 3.40	64 60	
"	" 2—2,020, 2¾	55 55		15	" cash, d'ft	11,648 13	
"	" 2—2,020, 3	60 60			" " fol. fr't, Gillespie & Co	30 00	
"	" 1—870, 2¾	23 92			" sales, 19—19,780, 3.65	721 97	
"	" 2—2,270, 2.90	65 83		16	" cash, d'ft	1,178 55	
"	" 7—5,700, 2.85	162 45			" " fol. fr't, Borse	165 00	
"	" 1—650, 3.15	20 47					
"	" 28—28,600, 3½	1,001 00					
"	" 1-1—1,320, 3½	46 20					
"	" 18—16,480, 3.60	593 28					
"	" 2—1,790, 2¾	49 22					

Exhibit 3 to F. J. Rappal Jr.'s Testimony—Continued.

1885.						
Sept. 10	To cash, 4—5,020, 3.60	180 72	Sept. 16	By sales, 24—23,960, 3.67½	880 53
	" 1—1,060, 4	42 40		" " 28—20,200, 2¼	454 50
	" shipper	3 00		" " 7—6,310, 3.40	214 54
	" exc	3 10		" " 111—117,260, 3.30	3,869 58
11	" "	3 00		" " 27—3.55	1,057 19
	" 1—880, 2½	22 00		" " fol. fr't	29 00
	" 9—9,730, 3.40	330 82	18	" cash, d'ft	20,000 00
	" 10—13,300, 4.60	611 80	19	" sales, 4—3,680, 3.20	117 76
	" 1—930, 2¾	25 57		" " 14—12,460, 3¼	395 20
	" 20—17,120, 2¾	470 80		" " 1 for	10 00
	" 10—12,840, 4.80	616 32		" cash fol. fr't, Campbell, L. & Co	58 00
	" 1—1,160, 4¼	49 30		" cash fol. fr't, Snider & Co.	640 00
	" 15—18,500, 4½	832 50		" cash fol. fr't, Snider & Co.	160 00
	" 1—1,200, 4	48 00		" cash fol fr't, McFarland	29 00
	" 1—1,060, 4	42 40		" " " Stoller & Co.	708 00
	" 2—2,730, 4¼	116 02		" " " d'ft	7,593 60
			21	" " ac. lump jaw	10 00
				" " error White & H	25 80
			22	" " fol. fr't, Snider & Co.	1,000 00
				" cash, d'ft	20,675 35
			23	" " fol. fr't	275 00
	For'd	67,916 07		For'd	146,316 86
804					
	Bro't for'd	67,916 07		Bro't for'd	146,316 86
Sept. 12	To cash, exch	6 50	Sept. 23	By cash fol. fr't, Snider & Co.	200 00
	" 16—20,140, 4.60	926 40		" " d'ft	6,819 19
	" 4—4,150, 4	166		" sales, 18—21,040, 4¼	894 20
	" 17—22,220, 4.60	1,022 16	24	" cash, d'ft	4,565 39
	" 1—1,290, 4	51 60			
	" 18—24,630, 4.40	1,083 72			
	" 34—48,360, 5.40	2,466 36			
	" 2—2,220, 1¾	38 85			
	" Bowen	2 00			
	" 5—6,710, 3.30	221 43			
	" for rate	15 00			
14	" 19—19,060, 3.60	686 16			
15	" exc	8 23			
	" 7—6,340, 3¾	237 75			
	" 27—32,930, 3¾	997 02			
	" 3—3,830, 4¼	162 77			
	" 35—46,680, 4.65	2,170 62			
	" 10—12,390, 4¼	526 57			
	" 56—74,300, 4.60	3,417 80			
	" 1—1,600, 3¾	60 00			
	" 54—73,790, 4.60	3,394 34			
	" 36—45,100, 4.35	1,961 85			
	" 2—2,070, 4	82 80			
16	" exc	87			
	" 17—21,950, 5	1,097 50			
	" 2—2,420, 4½	108 90			
17	" 35—26,900, 3½	672 50			
	" 104—109,600, 3.15	3,452 40			
	" 27—29,780, 3½	1,042 30			
	" 49—50,400, 2.70	1,360 80			
18	" 18—15,700, 3.15	494 55			
	" 7—8,870, 4.60	408 02			
	" 1—980, 3¾	36 75			
	" 8—8,730, 1¾	261 90			
	" 2—2,020, 1¾	35 34			
	" 7—9,390, 4½	422 55			
	" 13—15,560, 3¼	503 75			
	" 8—10,200, 4	408 00			
	" 14—18,680, 4¼	793 90			
	" 2—2,360, 4	94 40			
	" 15—18,940, 4.15	786 01			
	" 2—2,100, 3¾	78 75			
	" 1—860, 3	25 80			
	" 27—25,420, 2¾	699 05			
	" 13—12,360, 2.80	346 08			
	" 19—20,280, 3¾	695 10			
	For'd	101,434 22		For'd	158,795 64

Exhibit 3 to F. J. Rappal Jr.'s Testimony—Continued.

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1885.		Bro't for'd	101,434 22			Bro't for'd	158,795 64
Sept.	18	By cash, 9—7,760, 2.55	197 88	Sept.	24	By cash fol. fr't (Peters)	110 00
		" 3—2,780, 2.65	73 67			" sales, 10—11,460, 4	458 40
		" 25—21,840, 2.90	633 36			" " 38—42,870, 3¼	1,393 27
		" 14—12,840, 2¾	353 10			" " 41—44,460, 3¼	1,444 95
		" 8—8,100, 2½	202 50		25	" cash fol. fr't, Campbell, L. & Co	161 70
		" 63—66,340, 3.15	2,089 71			"	
		" 42—43,820, 3.15	1,380 33			" cash, ac. big jaw	22 04
		" 62—64,800, 3.15	2,041 20			" " d'ft	25,925 61
		" 57—70,540, 4.35	3,068 49			" sales, 47—53,400, 3.45	1,813 80
		" 39—38,500, 3.15	1,212 75			" " less 1—950, 3	
		" 2—1,950, 2½	48 75			" " 59—74,830, 4.20	3,201 86
		" exc	15 00			bonus, 59.00	
	19	" "	5 70				
		" 1—1,180, 3	35 40				
		" F. J. R	50 00				
		" 19—23,300, 4.10	955 30				
		" Bowen	20 00				
		" 27—25,920, 2.60	673 92				
		" 46—46,120, 2.80	1,291 36				
		" 69—67,280, 2.80	1,883 84				
		" 93—91,280, 2.80	2,555 84				
		" 54—51,770, 2.80	1,449 56				
		" 90—78,540, 2.60	2,042 04				
	21	" 4—3,700, 2½	92 25				
	22	" exc	15 45				
		" 7—5,510, 2.35	129 48				
		" 2—1,470, 2.00	29 40				
		" 3—2,050, 2.35	48 17				
		" 2—1,950, 2.90	56 55				
		" 2—2,040, 3¼	66 30				
		" 111—89,900, 2.60	2,337 40				
		" 16—15,320, 2.90	444 28				
		" 237—237,850, 3	7,135 50				
		" 199—198,730, 3	5,961 90				
		" 62—62,420, 3.10	1,935 02				
		" 10—8,380, 2	167 60				
		" 1—670, 2	13 40				
		" 104—108,780, 3	3,263 40				
		" 19—22,230, 4.15	922 54				
		" 45—47,300, 3.10	1,466 30				
		" shipper	2 00				
	23	" exc	5 10				
		" 4—4,400, 2.40	105 60				
		" 17—19,120, 3	573 60				
		" 7—6,410, 2½	160 25				
		" 29—20,500, 2.15	440 75				
		For'd	149,086 26			For'd	193,327 27

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		Bro't for'd	149,086 26			Bro't for'd	193,327 27
Sept.	23	To cash, 13—13,550, 2.90	392 95	Sept.	26	By cash fol. fr't, Stoller	456 00
		" 4—4,510, 2.90	130 79			" " " Quinlin & Co	480 00
		" 4—4,440, 3	133 20			" " " Snider & Co	760 00
		" 1—1,230, 2	24 60			" " " Snider & Co	80 00
		" 36—33,860, 2.90	981 94			" " " d'ft	5,960 24
		" 3—3,830, 4.30	164 69			" sales, 11—7,530, 2.65	199 54
		" 3—2,300, 2.00	46 00			" 4—4,160, 3¼	135 20
		" 2—2,600, 4.65	120 90		28	cash, d'ft	5,114 03
		" 1—1,280, 3.75	48 00			" " fol. fr't, Quinlin, M. & Co	570 00
		" 9—11,940, 4.65	555 21			" " " Snider & Co	243 00
		" 19—24,580, 4.95	1,216 71			" " Barnes, White & H	10 00
		" 10—9,900, 3.00	297 00				
		" 4—2,860, 2½	71 50		29	" " fol. fr't, Quinlin & Co	40 00
	24	" exc	3 29			" " R. R. Co	761 97
		" 64—67,280, 3	2,018 40			" sales, 117—109,160, 3¼	3,547 70
		" 24—21,900, 2.60	569 40			" " 81—100,570, 4.30	4,324 51
		" 10—9,270, 2.60	241 02			" " 14—16,160, 3.65	589 84
		" 1—1,150, 3	34 50			" cash d'ft	3,713 78
		" 1—1,280, 2	25 60			" " fol. fr't, Gillespie & Co	45 00
		" 12—12,350, 3	370 50		30	" " d'ft	6,231 10
		" 27—34,900, 4.65	1,627 03				
		" 38—42,820, 3.30	1,390 48				
		" 41—44,660, 3.15	1,388 07				
		" 1—1,260, 3¼	40 95				
		" 2—3,520, 3	67 80				
		" exc	19 44				
		" 1 for	20 00				
		" 5—4,920, 270	132 84				
		" 19—21,860, 4.30	939 98				
		" 167—170,740, 3.10	5,292 94				

Exhibit 3 to F. J. Rappal Jr.'s Testimony—Continued.

1885.							
Sept. 24	To cash, 20—21,390, 2¾, $10.00		577 47				
	" 16—15,780, 2.85		449 73				
	" 53—58,090, 3¼		1,887 92				
	" 6—5,140, 2½		128 50				
	" 2—1,880, 2.65		49 82				
	" 2 for		35 00				
	" 2 "		20 00				
	" 245—251,300, 3⅛		7,853 12				
	" 88—90,860, 3⅛		2,839 37				
	" 66—67,610, 3⅛		2,112 81				
	" 138—124,070, 2.87½		3,567 00				
	" 27—18,520, 2.15		398 18				
	" 115—100,970, 2.87½		2,902 88				
	" 8—7,350, 2.85		209 47				
	" 1—1,130, 1¾		19 77				
	For'd		190,503 03		For'd		226,589 18
807							
	Bro't for'd		190,503 03		Bro't for'd		226,589 18
Sept. 24	To cash, 19—21,720, 4¼		923 10	Oct. 1	By cash fol. fr't, Quinlin & Co		792 80
	" 1—1,010, 3¾		37 87		" " } Snider & Co.		600 00
25	" 10—12,090, 3.10		374 79		" " }		280 00
	" exc		4 47		" d'ft		19,505 62
26	" 2—1,770, 2¼		44 25				
	" 16—18,680, 3.80		709 84				
	" 1—1,100, 3		33 00				
	" 59—74,830, 4.20		3,142 86				
	" 5—5,660, 1.87½		106 12				
	" 11—12,250, 2.30, 10.00 off		271 75				
	" 4—5,280, 2.80		147 84				
	" 1—1,100, 3.65		40 15				
	" 49—38,540, 2.40		1,040 58				
	" 3—2,360, 2¼		53 10				
	" 2—2,380, 2¾		65 45				
	" 1—1,270, 3		38 10				
	" 1—790, 1¾		13 82				
	" 11—11,730, 7.95		346 03				
	" 1—1,260, 2¾		34 65				
	" 2—1,780, 2		35 60				
	" 1—890, 2½		22 25				
	" 1—1,230, 2¾		33 82				
	" 3—2,490, 2.60		64 74				
	" 6—5,980, 2.80		167 44				
	" 1—960, 2½		24 00				
	" 32—28,560, 2.80		799 68				
	" 53—48,700, 2.80		1,363 60				
	" 11—9,000, 2.80		252 00				
	" 1—960, 1½		11 40				
	" 2—1,940, 2¾		53 35				
	" 24—19,200, 2.65		508 80				
	" 1 for		10 00				
	" Bowen		20				
28	" 14—13,550, 2¾		372 62				
	" 12—@ 10,00		120 00				
	" 9—8,850, 2.70		238 95				
	" 167—135,500, 2.80		3,794 00				
	" 1—1,100, 2.40		26 64				
	" 31—38,360, 4¼		1,630 30				
	" 1—1,270, 3		38 10				
	" 20—22,600, 3.35		757 10				
	" 5—5,130, 3		153 90				
	" exc		3 82				
	" "		50				
	" 2—2,480, 3.35		83 08				
	" 1 for		13 00				
	For'd		208,529 49		For'd		247,767 60
808							
	Bro't for'd		208,529 49		Bro't for'd		247,767 60
Sept. 29	To cash, 60—66,880, 4.17½		2,792 24	Sept. 1	By cash fol. fr't, Yard Co		300 00
	" 17—14,980, 2.85		426 93	3	" " Mountjoy & Co		100 00
	" 1—850, 2.70		22 95		By cash fol. fr't, Snider & Co		40 00
	" 1—1,020, 2½		25 50		" cash d'ft		691 70
	" 1—870, 2.40		20 88		" sales, 9—9,880, 3.80		375 44
	" 18—22,940, 4¼		974 95		" " 2—1,530, 3		45 90
	" 1—1,240, 4.10		50 84		" cash, d'ft		6,217 01
	" 17—20,970, 3.80		796 86	5	" " "		19,409 36
	" 12—9,380, 2.60		243 88	6			
	" 1—1,430, 4¼		60 77				

Exhibit 3 *to F. J. Rappal Jr.'s Testimony*—Continued.

1885.							
Sept. 29	To cash, 1—940, 2¼	21 15		By sales, 1—1,160, 3.65	42 34
	" 1—1,000, 2.70, 27	27 00		" " 5—5,140, 3,40	174 76
	" 1—1,000, 3	30 00		" " 1—1,170, 2.60	30 42
	" 3—2,580, 2	51 60		" " 2—2,720, 3¾	92 00
	" 123—14,540, 2.87½	3,293 02			
30	" exch.	7 35			
	" F. J. R.	50 00			
	" 133—162,660, 4	6,506 40			
	" 1—1,080, 2¾	29 70			
	" Fr't, rebate, Q. M. & Co.	25 00			
	" 1—1,160, 4	46 40			
	" 2—1,860, 2	37 20			
	" 2—1,860, 2.10	39 06			
	" hay	50			
	" 375—322,880, 2½	8,072 00			
	" telegrams	36 74			
	" 1—800, 240	19 20			
	" 6—4,930, 2.40	118 32			
	" 102—101,870, 2.90	2,954 23			
	" 85—85,610, 2.90	2,482 69			
	" 82—81,735, 2.90	2,370 31			
	" 78—79,790, 2.90	2,313 91			
	" 92—92,120, 2.90	2,671 48			
	" 9—9,800, 3.70	362 60			
	" exc.	14 60			
	" 1 for	12 00			
	" 2—1,900, 2¾	52 25			
	" 3—3,080, 3.40	104 72			
	" 7—7,400, 3.40	251 00			
	" 13—15,150, 3.40	515 10			
	" 2—1,880, 2½	47 00			
	" 1—1,000, 2	20 00			
	For'd	246,528 42		For'd	275,344 53

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	Dr.			Cr.	
	Brought for'd	246,528 42		Bro't for'd	275,344 53
Oct. 3	To cash, 79—60,970, 1¾	1,066 95	Oct. 10	By cash fol. fr't, Snider & Co.	40 00
	" shipper	20 00			
	" 1—830, 2.35	19 50			275,384 53
	" 12—10,070, 2¾	270 92			
	" Bowen	30 00			
	" exc	55			
	" hay	15 25			
5	" T. J. R.	50 00			
	" 1—800, 2.00	16 00			
	" ret'd d'ft & fees	6,233 71			
6	" " " "	19,505 62			
8	" " " "	700 94			
		274,463 86			
	To commission on 768 cattle sold at Kansas City	384 00			
		274,847 86			
	Balance	536 67			
		275,384 53		Balance	536 67

E. & O. E.

***Drafts returned not paid**	**6,233 71**
	19,505 62
	700 94
	26,440 27
Less balance	**536 67**
	25,903 60

* Words and figures printed in bold-face type in pencil in original.

810 EXHIBIT 4 to F. J. Rappal Jr.'s Testimony.

Page 294. *A. J. Gillespie & Co. Ac. Bowen & Co.*

1885.			1885.		
July 23	Draft ac. Bowen	4,300 00	July 21	Net sales, Bowen	6,159 90
24		6,650 00	22	"	2,925 26
27		8,500 00	23	"	11,076 75
27		24,000 00	24	"	2,226 22
29	B. & J	6,000 00	27	"	3,058 60
		3,500 00	28	"	4,051 68
		17,500 00		"	4,998 06
Aug. 1		11,000 00		"	9,580 37
3		600 00		" B. & J	3,216 37
6		4,400 00		"	14,121 17
			Aug. 1	"	5,111 55
			3	"	5,600 48
			6	"	4,329 56
			17	Cash paid Bowen	20 00
		*86,450.00.			76,475.97.

Page 438. *Rappal and Bowen, Kansas City Shipments.*

1885.			1885.		
Aug. 10	To sight draft	2,962 25	Aug. 10	By ac. sales	3,106 36
12	"	20,446 42	12	"	20,161 34
13	"	14,005 22	14	"	13,661 69
		*37,413.89.			36,929.39.

811 *Exhibit 4 to F. J. Rappal Jr.'s Testimony*—Continued.

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1885.			1885.		
	To balance of ac	7,025 78			
Aug. 7	draft, Bowen	5,240 68	Aug. 7	Net sales, Bowen	5,975 29
10		15,868 25	10	"	16,315 62
		266 76	14	" St. Marys	3,081 90
13		3,243 00	14	" Snider	5,356 58
14		*43,753.42		"	7,566 95
15		11,710 03	15	"	11,751 35
17		1,452 14	17	"	555 00
17		538 33		"	1,468 64
15	J. James, shipping	26 00	Aug. 19	"	3,854 45
17	J. M. Holt, $38.00; Dyce, $2.00	40 00	20	"	4,896 39
19	draft, Bowen	725 70	21	" J. & R	12,816 13
19	Wm. James, shipping	34 00		" Colorados	3,693 87
19	draft, Bowen	4,037 55		"	922 22
20	cash, shipping	20 00		" natives	8,127 46
20	" Stoddard	32 00	24	"	7,087 30
21	draft, Bowen	12,082 32		"	8,805 80
21	" J. & R	13,152 35	27	"	1,559 45
21	" Bowen	13,107 65	28	"	1,832 98
22	cash, D. W. B., shipping	10 00	31	"	59 70
	J. James, shipping	2 00		"	5,052 35
24	" "	20 00		"	3,495 87
	J. M. Holt, "	20 00		"	5,778 33
24	draft, Bowen	1,018 08		"	17 50
	"	10,000 00			
	"	148 45			
26	A. Barnes, shipp'g	20 00			
	draft, Bowen	970 21			
27	"	5,897 88			
	"	790 60			
	cash, shipp'g	4 00			
28	draft, 38 cattle	1,869 28			
28	W. D. B., shipping	30 00			
31	J. M. Holt, $20.00; James, $18.00	38 00			
	draft, 137 cattle	8,166 55			
	" 170	9,454 67			
		*139,171 21			*120,071 13

* Figures printed in bold-face type in pencil in original.

Exhibit 4 to F. J. Rappal Jr.'s Testimony—Continued.

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1885.				1885.		
	Forward	*139,171 21		Forward		*120,071 13
Sept. 2	cash, Stoddard, shipping	40 00	Sept. 1	Net ac. sales		6,448 66
						1,927 52
4	W. D. B., shipping	6 00	Aug. 6	Cash, delay, C., B. & Q.		430 57
	draft, Bowen	12,462 01	15	" F. J. R., Sen'r		40 00
		4,390 66	Sept. 3	½ loss on 321 cattle, J. H. J		168 11
7	cash, James, shipping	24 00		Net ac. sales		14,320 68
8	" Bowen, "	20 00	4	"		3,218 72
7	draft, Bowen	10,384 38	7	"		12,433 75
8	cash, J. M. Holt	20 00	8	"		13,426 81
	draft, Bowen	13,000 00	12	"		4,321 54
		2,868 36	12	"		9,328 32
11		23,347 00	14	"		12,825 05
12	cash, James, shipping	20 00	14	"		8,406 95
	" Bowen, "	14 00	7	Cash, H. & S., Jr., Ry		7 50
	draft, Bowen	4,131 56	17	Net ac. sales		11,488 00
14	cash, Bowen, shipping	20 00	18	"		1,256 10
	" Stoddard	16 00	21	"		15,810 08
	draft, Bowen	8,636 70	22	"		10,106 07
17	cash, James, shipping	20 00	25	"		19,774 59
18	draft, Bowen	11,648 13	25	"		6,846 93
19	" "	1,178 25	26	"		4,172 97
21	cash, J. James, shipping	20 00	28	"		27,244 53
	cash, Bowen, shipping	20 00	29	"		4,862 00
21	draft, Bowen	20,000 00	30			5,021 61
22	cash, Stoddard, shipping	20 00				
	draft, Bowen	7,593 60				
23		467 14				
25	cash to James, $20.00; W. Bowen, $20.00; J. James, $20.00	60 00				
25	draft, Bowen	6,819 19				
	"	20,077 66				
26	cash, Stoddard, shipping	20 00				
	draft, Bowen	4,595 39				
28	"	25,925 61				
	"	5,960 24				
29	cash, Wm. James, shipping	20 00				
30	W. B. Bowen	20 00				
	draft, Bowen	5,114 03				
		*328,721 12				*313,957 19

813

1885.			1885.		
	Forward	*328,721 12		Forward	*313,957 19
Oct. 1	draft, Bowen	3,713 78	Oct. 1	Net ac. sales	3,383 78
2	cash, J. James, shipping	20 00	2	"	5,880 25
2	A. & J., cigars	5 00	3	"	16,519 69
3	W. James, shipp'g	20 00	6	"	1,857 27
	W. Bowen, "	20 00			
5	" "	20 00			
		*332,519 90			*341,598 18

	*341,598 18
	332,519 90
	9,078 28

814 **EXHIBIT 5 to F. J. Rappal Jr.'s Testimony.**

A. J. Gillespie. T. E. Gillespie. L. J. Gillespie. J. F. Gillespie.

Established 1871.

A. J. Gillespie & Co., live stock commission merchants; office, room 15 Exchange building.

We are prepared to make liberal advances to parties feeding stock. All such parties will find it to their advantage to correspond with us. Customers will please advise us of shipments, that we may have lots prepared with feed and water — arrival of stock.

KANSAS CITY, MO., *July 1st*, 1885.

W. P. Bowen & Co. in Acc. with A. J. G. & Co.

	Dr.		1885.		
June 15	To Balance	21,509 70	June 15	By rebate fr't	290
	shipper	6 00		" " "	161 60
	8 cattle, 8,520, 4.20	357 84		" " "	76 44
	2 " 2,240, 4.70	105 28		" " "	64 00
	16 " 20,860, 5c	1,043 00	17	By Rap., Sons & Co., 259 cat	16,091 38
	2 " 2,700, 5	135 00		By Rap., Sons & Co. 83 cat	4,216 25
	200 " 219,310, 4.70	10,307 57		" rebate fr't	126 00
	66 " 82,150, 5.10	4,189 65			
	2 " 2,440, 4½	109 80			
	4 " 4,780, 4½	215 10			
	29 " 35,220, 4.90	1,725 78			
	1 " 1,020, 460	46 92			
16	52 " 57,100, 4¾	2,712 25			
	72 " 83,760, 4¾	3,978 60			
	67 " 79,600, 4.90	3,900 40			
	94 " 120,900, 5.10	6,165 90			
	6 " 6,310, 4½	283 95			
	50 " 68,920, 5.30	3,652 76			
	2 " 2,100, 4½	74 50			
	3 " 3,140, 4.70	147 58			
	45 " 60,240, 5¼	3,162 60			
	2 " 2,200, 5	110 00			
	11 " 12,930, 4.80	620 64			
	cash on stillers	1,500 00			
	19 cattle, 23,180, 4.90	1,135 82			
	19 " 23,440, 4.95	1,160 28			
	15 " 20,560 {5.05 & 5}	1,043 25			
	1 " 1,020, 4½	45 90			
	exchange	30 56			
17	108 still cattle	6,657 72			
	19 cat., 26,110, 5.10	1,331 61			
	18 " 21,420, 4.90	1,049 58			
	18 " 23,770, 5	1,188 50			
	18 " 19,660, 4¾	933 85			
	11 " 13,360, 4.90	654 64			
	37 " 41,920, 4.70	1,970 24			
	16 " 18,310, 4.80	878 88			
	59 " 76,800, 5⅛	3,936 00			
	16 " 19,760, 4.90	968 24			
	For'd	89,065 89		For'd	21,025 67

815

			1885.		
June 17	To am't for'd	89,065 89		By am't for'd	21,025 67
	F. J. R., cash	50 00	June 18	M. James, ⅓ in 156 c	101 22
	shipper	18 00		rebate fr't	207 90
	Bowen	20 00	19	2 cattle, sold here	90 84
	switching	36 00		Wm. James, ½ in 57 c	44 28
	⅓ prof/it on 75 c	26 59	20	R., S. & Co, 329 c	18,174 53
18	92 cat., 127,720, 5¼	6,545 65		R. P. claim paid	458 25
	4 " 6,170, 4½	277 65	22	R., S. & Co., 107 c	6,395 40
19	½ prof. to James, 88 c	79 75		" " 96 c	7,156 27
	fr't	76 44		" " 205 c	12,853 52
	shippers	23 00		" " 462 c	27,919 14
	18 cat., 20,440, 4.65	950 46			
	12 do. 14,020, 4.85	679 97			
	18 do. 21,860, 4.80	1,049 28			
	18 do. 20,820, 4.70	978 54			
	14 do. 15,620, 4½	702 90			
	2 do. 2,070, 4	82 80			
	8 do. 7,740, 4.40	340 56			
	8 do. 8,900, 4.90	436 10			

Exhibit 5 to F. J. Rappal Jr.'s Testimony—Continued.

June 19	To 28 cat., 37,500, 4.90	1,837 50				
	8 " 8,400, 4.57	384 30				
	20 " 21,100, 4.60	970 60				
20	exchange	27 37				
	shippers	82 00				
	cash, Bowen	50 00				
	54 stillers	3,372 00				
	4 cattle, 3,960, 4½	178 20				
22	exchange	67 21				
	108 stillers	6,624 24				
	Rothchilds, ⅛ in 96 c.	145 58				
23	20 cattle, 20,600, 4.80	988 80				
	9 " 6,600, 4.85	465 60				
	34 do. 48,060, 5.35	2,571 21				
	18 do. 17,710, 4.60	814 66				
	19 do. 23,200, 5.05	1,171 60				
	34 do. 45,040, 5.30	2,387 12				
	20 do. 22,160, 5	1,108 00				
	23 do. 30,906, 5.15	1,591 35				
	42 do. 54,060, 5.17½	2,797 60				
	1 do. 1,510, 4	60 40				
	35 do. 47,230, 520	2.455 96				
		131,590 89				94,427 02
816						
		*131,599 89				*100,427 02
June 24	To am't for'd	131,590 89	1885.	By balance for'd		94,427 02
	" Rothschild & Co., loss on 9 cars stillers	455 11	June 20	" ½ profit 462 c.		53 20
	" shipper	10 00	23	" R. fr't		96 00
	" 108 cattle, 131,463, 5	6,573 10	24	" R., Sons & Co., 159 c.		8,714 34
	" 14 " 19,650, 5.40	1,061 10		" " 55 c.		3,370 30
	" 1 " 1,130, 5	56 50		" " 108 c.		6,896 46
	" 16 " 19,850, 5¼	1,017 31	25	" R. fr't		24 00
	" 36 " at Paola	2,356 64	26	" "		90 00
	" 4 " 4,300	182 75	27	" advance on stillers refunded		1,500 00
25	" exchange	28 57		" R. fr't		21 00
	" cash, Rappal	15 00		" R., Sons & Co., 108 c.		6,750 64
	" 3 cattle, 3,070, 4.80	147 36		" " 152 c.		9,739 44
	" 1 do. 1,060, 5c	53 00		" " 53		3,885 95
	" 7 do. 8,080, 5c	404 00		" " 53		3,947 26
	" 6 do. 6,320, 5c	316 00		" " 54		3,739 48
	" 2 do. 2,800, 5.15	144 20				
	" 3 do. 3,700, 5.05	186 85				
	" 4 do. 4,640, 5	232 00				
26	" shippers	58 00				
	1 cattle, 1,440, 5	72 80				
	15 do. 18,730, 5.30	992 69				
	20 do. 24,210, 5.35	1,295 23				
	17 do. 22,800, 5½	1,254				
	2 do. 2,040, 5	102				
	20 do. 21,760, 4.85	1,055 36				
	1 do. 1,010, 4¼	42 92				
	2 do. 2,200, 5	110 00				
	*29 do. 36,230, 5.35	2,407 50				
	3 do. 3,000, 4¾	142 50				
	36 do. 45,000, 5.35	1,938 30				
	42 do. 50,830, 5.40	2,744 82				
	32 do. 39,720, "	2,144 88				
	1 do. 900, 4¾	42 75				
	1 do. 800, "	38 00				
	15 do. 19,060, 5.40	1,029 24				
	1 do. 1,000, 4¾	47 50				
27	shipper	26 00				
	cash	25 00				
		160,399 04				143,255 09
817						
1885.	To bal. for'd	160,399 04		By bal. for'd		143,255 09
June 27	53 cattle, 60,530, 5.15	3,117 29	29	R. freight		47 00
	5 do. 5,990, 5.20	311 48		" "		42 00
	2 " 2,090, 4.70	98 23	30	R., Sons & Co., 238 c.		15,141 05
	145 " 185,213, 5	9,260 65		R. fr't		90 00
	1 " 1,305, 3½	45 67		R., Sons & Co., 40		2,323 50
	21 " 21,100, 4.70	991 70		" " 146		9,385 66
	65 " 90,960, 5.60	5,093 76		" " 205		13,458 79
	2 " 2,510, 5	125 50				
	36 " 44,060, 3.35	2,357 21				
	3 " 3,160, 4.75	150 10				
	15 " 20,600, 5.62½	1,158 75				
	3 " 3,140, 5c	157 00				

Exhibit 5 to F. J. Rappal Jr.'s Testimony—Continued.

June 29	To exchange	42 19			
29	49 cattle, 54,000, 5.15	2,781 00			
	51 " 70,200, 5.50	3,861			
	3 " 3,330, 4.60	153 18			
	41 " 51,180, 5.35	2,738 13			
	34 " 42,780, 5½	2,352 90			
	18 " 22,330, 5.40	1,205 82			
30	14 " 15,600, 5	780			
	2 " 1,770, 4½	79 65			
	31 " 35,750, 5.10	1,823 25			
	1 " 1,300, 4.60	59 80			
	20 " 25,180, 5.40	1,359 72			
	1 " 1,090, 4.40	47 96			
	34 " 44,820, 5.35	2,397 87			
	2 " 2,090, 4½	94 05			
	17 " 23,270, 5.35	1,244 94			
	21 " 23,260, 5c	1,163 00			
	5 " 5,340, 4.70	250 98			
	1 " 1,170, 4½	52 65			
	2 " 2,590, 5	129 50			
	8 " 8,660, 4.80	415 68			
	3 " 3,810, 4.70	179 07			
	shipper	14 00			
	cash, Rappal	50 00			
					183,743 09
818		206,542 74			
	Bal. bro't for'd	206,542 74		By bal. for'd	183,743 09
June 30	To hay	3 50		" balance	23,067 73
	Phalan, ⅓ 170 c	127 08			
	" 102 c	97 08			
	exchange	40 42			
		206,810 82			206,810 82
July 1st	To balance	23,067 73	*July 6	By R., S. & Co., 173 c.	9,967 60
				do. 185	11,734 07
					21,701 67
				loss	1,366 06
					23,067 73

819

Exhibit 4.

No. 6864. Kansas City, *Oct.* 5, 1885.

"A. J. Gillespie & Co., live stock commission merchants:

"Pay to the order of P. Connelly, as. cash'r, sixty-two hundred and thirty-three $\frac{71}{100}$ dollars.

"$6,233.71. A. J. GILLESPIE & CO.

"To Kansas City Stock-Yards Bank, Kansas City, Kas."

Exhibit 5.

No. 6876. Kansas City, *Oct.* 6, 1885.

"A J. Gillespie & Co., live stock commission merchants:

"Pay to the order of P. Connelly, ass. cash., nineteen thousand and five hundred and five $\frac{62}{100}$ dollars.

"$19,505.62. A. J. GILLESPIE & CO.

"To Kansas City Stock-Yards Bank, Kansas City, Kas."

* Words and figures printed in bold-face type in pencil in original.

820 EXHIBIT 6.

No. 6903. KANSAS CITY, *Oct.* 7, 1885.

"A. J. Gillespie & Co., live stock commission merchants:

"Pay to the order of P. Connelly, ass. cash., six hundred and ninety-six and $\frac{32}{100}$ dollars.

"$696.32. A. J. GILLESPIE & CO.

"To Kansas City Stock-Yards Bank, Kansas City, Kas."

821 *Deposit Tickets.*

Deposited with Union Stock-Yard National Bank of Chicago for account of Rappal, Sons & Co.

CHICAGO, *Oct.* 1*st*, 1885.

Currency.	
Checks.	
	1,061 15
	1,344 94
	42 60
	65 32
	5,439 60
	144
	8,097 61

Deposited with Union Stock-Yard National Bank of Chicago for account of Rappal, Sons & Co.

CHICAGO, *Oct.* 2*nd*, 1885.

Currency.	
Checks.	
	59 34
	6,649 50
	6,708 84

822 Deposited with Union Stock-Yard National Bank of Chicago for account of Rappal, Sons & Co.

CHICAGO, *Oct.* 3*rd*, 1885.

Currency.	
Checks.	
	937 20
	1,723 20
	2,660 40

Deposited with Union Stock-Yard National Bank of Chicago for account of Rappal, Sons & Co.

CHICAGO, *Oct.* 3*rd*, 1885.

Currency.
Checks.

N. Morris ..... 7,574 43 ✓

Deposited with Union Stock-Yard National Bank of Chicago for account of Rappal, Sons & Co.

CHICAGO, 3*rd Oct.*, 1885.

Currency.
Checks.

155 ✓
10,227 10 ✓
2,673 90 ✓
13,056 00

823 Deposited with Union Stock-Yard National Bank of Chicago for account of Rappal, Sons & Co.

CHICAGO, 5 *Oct.*, 1885.

Currency.
Checks.

6,301 32
131 40
6,432 72
11 90
6,444 62

Deposited with Union Stock-Yard National Bank of Chicago for account of Rappal, Sons & Co.

CHICAGO, *Oct.* 6, 1885.

Currency.
Checks.

7,596 37 ✓

Deposited with Union Stock-Yard National Bank of Chicago for account of Rappal, Sons & Co.

CHICAGO, *Oct.* 6*th*, 1885.

Currency.
Checks.

2,583 52 ✓

824 Deposited with Union Stock-Yard National Bank of Chicago for account of Rappal, Sons & Co.

CHICAGO, *Oct.* 8, 1885.

Currency, c'y by.
Checks. .26

Deposited with Union Stock-Yard National Bank of Chicago for account of Rappal, Sons & Co.

CHICAGO, 9 *Oct.*, 1885.

Currency—note, 4,006.73
Checks.

825 Which was all the evidence offered upon the hearing of said cause.

W. Q. GRESHAM.

Endorsed: Filed May 25, 1887. Wm. H. Bradley, clerk.

826 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein A. J. Gillespie, Thomas E. Gillespie, and Louis J. Gillespie, as co-partners doing business under the firm name of A. J. Gillespie & Co., are the complainants, and The Union Stock-Yards National Bank *et al.* are the defendants, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this third day of June, 1887.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 1004. The Union Stock-Yards National Bank, appellant, *vs.* A. J. Gillespie, Thomas E. Gillespie, and Louis J. Gillespie, copartners doing business under the firm name of A. J. Gillespie & Co. Filed August 15th, 1887.

Office Supreme Court U. S.
FILED.
AUG 23 1890
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1890.

No. .

THE UNION STOCK YARDS NATIONAL BANK, *Appellant,*

vs.

ANDREW J. GILLESPIE, THOMAS E. GILLESPIE, AND LOUIS J. GILLESPIE, COPARTNERS ETC., *Appellees.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLANT.

EDWARD O. BROWN,
COUNSEL FOR APPELLANT.

BARNARD & GUNTHORP, LAW PRINTERS, CHICAGO.

ERRATA IN RECORD.

We observe the following errors in the printed Record:

1. In the printed Record, pp. 95–6, what purports to be p. 158 of the original record is a duplication and should be struck out; whereupon the continuity of the matter will be restored.

2. P. 113 of printed Record—The words "Returned, not honored in bank" belong to the preceding item of $5,361.34.

3. On p. 427 of the printed Record, line 3, $1,352.35 is a clerical or typographical error for $13,152.35, as will be obvious by comparing the tabular statement at the bottom of p. 425.

4. On p. 445, 4th line from bottom, "*order* draft" should be "overdraft." The excessive draft referred to is announced in the letter of Sept. 18 (p. 443), being for $20,000. The statement on the next page (without date, but identified by the mention of 25 cars) shows the net cost of the cattle to have been $17,278.54. Adding to this the deduction mentioned on p. 445, we have within 5 cents of the amount of the draft.

On p. 202, middle of 4th line from bottom, the word "morning" should obviously be "evening."

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1890.

No. .

THE UNION STOCK YARDS NATIONAL BANK, *Appellant*,

vs.

ANDREW J. GILLESPIE, THOMAS E. GILLESPIE, AND LOUIS J. GILLESPIE, COPARTNERS ETC., *Appellees*.

Appeal from the Circuit Court of United States for the Northern District of Illinois.

[The references are to the pages of the Record as printed.]

STATEMENT OF THE CASE.

The complainants, Andrew J. Gillespie and his two sons, Thomas E. Gillespie and Louis J. Gillespie, were copartners in business at Kansas City, Missouri, under the firm of A. J. Gillespie & Co.

Frederick J. Rappal and his two sons, Lawrence L. Rappal and Frederick J. Rappal Jr., who were defendants in the Circuit Court, but against whom no decree was rendered, and who are not parties here, were copartners in the business of selling cattle on commission under the firm of Rappal, Sons & Co. at the Union Stockyards,

Illinois. Frederick J. Rappal the elder resided temporarily at Kansas City during the transactions in controversy, viz., from about the 1st of May till early in October, 1885.

The Bill, as amended (Record, pp. 2–4, 11 and 12), alleges that the complainants, A. J. Gillespie & Co., owning 1065 head of cattle, consigned them to Rappal, Sons & Co. for sale on commission; that Rappal, Sons & Co. sold the cattle in three several lots on the 2d, 3d and 6th days of October 1885 respectively, and received for the three lots severally, over and above all commissions and charges, $5,880.25, $16,519.69 and $1,857.27, making in all $24,257.21; and that, without the knowledge or consent of the complainants, they deposited this money to their own credit with the Union Stockyards National Bank, the other defendant in the Circuit Court and the appellant here.

The Bill further alleges that the money so deposited was the money of the complainants, was held by Rappal, Sons & Co. in trust for complainants, and was the proceeds of cattle belonging to complainants entrusted to Rappal, Sons & Co. for sale; that it was the duty of Rappal, Sons & Co. to keep it separate from their own money for complainants' benefit; and that the Union Stockyards National Bank at the time of receiving the money had notice and full knowledge of all this.

The complainants also allege that on the 30th of September, they drew on Rappal, Sons & Co. against the first consignment of cattle for $6,231.10, on the 1st of October

against the second consignment for $19,505.62; and on the third of October a further draft, the amount of which is not stated in the bill, but which appears from the exhibits to have been for $691.70; that these drafts were all forwarded to the defendant the Union Stockyards National Bank for collection; that the first two reached it before any of the cattle had been sold, and the last before the last consignment had been sold; that none of these drafts were paid, and all were protested for non-payment under the direction of the defendant Bank, the first on the 2d, and the other two on the 5th of October.

That the defendant Bank applied the money deposited with it, to make good overdrafts and other alleged indebtedness of Rappal, Sons & Co. to it, and refused to pay over any part of it to the complainants, although served after the protesting of the drafts, with a written notice dated October 16, of their ownership of the money, which notice also explained the nature of the transaction between the complainants and Rappal, Sons & Co.; that the indebtedness of Rappal, Sons & Co. to the defendant bank (if any) arose before the money was deposited; that the money was not deposited to apply on it, and that the Bank has not forborne such indebtedness, nor been placed in any different position in regard to it, and will not be prejudiced by being required to account to complainants for the money.

That Rappal, Sons & Co., as a partnership and individually, are utterly insolvent, and were so when the deposits were made, and that the Bank then knew of their insolvency; but that the complainants were wholly ignorant of it when they consigned the cattle, and until after the deposits had been made.

The only specific relief asked by the bill is that the

Union Stock Yards National Bank may be decreed and adjudged to be a trustee of the money in question for the benefit of the complainants, and required to pay it over to them as the equitable owners. There is also a prayer for general relief.

The Answer of the Union Stock Yards National Bank (Record, pp. 15–18), denies that the complainants were the owners of the cattle in question; that they consigned any cattle to Rappal, Sons & Co.; that Rappal, Sons & Co. sold any cattle belonging to the complainants, or for their account, or to the proceeds of which complainants were entitled; that Rappal, Sons & Co. deposited with the bank any money of the complainants, or any money which they held in trust for the complainants or were bound to keep separate for the use of the complainants, or any proceeds of cattle belonging to complainants, or of cattle sold for account of complainants.

It also denies that Rappal, Sons & Co. deposited with the bank on the 2d, 3d or 6th of October, respectively, any such specific sum as is alleged by the complainants to have been deposited on those days, but states that deposits were made on those days of other sums, in the ordinary course of business, as to the source of which sums the bank had no knowledge or notice.

It denies that the Bank had any knowledge or notice of any property or interest of complainants in the money deposited, or that Rappal, Sons & Co. were charged with any trust or duty for or to the complainants in regard to it, or that any money deposited by Rappal, Sons & Co. had anything to do with any sales of cattle belonging to,

or consigned by, the complainants, or with the drafts of the complainants.

The Bank avers that Rappal, Sons & Co. had an ordinary commercial account with it, to the credit of which deposits were made every business day for several months preceding the 9th of October, in the ordinary and natural course of business; that all these deposits were, so far as the Bank ever had any intimation, and as it still supposes and believes, of their own money, or money which they were entitled to deal with as their own; that this account was closed on the 9th of October, and the Bank had at the time of receiving complainants' notice of October 16, and ever since, no funds deposited by Rappal, Sons & Co.; that since that date the Bank has owed them nothing, neither is their account overdrawn.

It denies that Rappal, Sons & Co. were insolvent at any time before the 9th of October, on which day their account with the defendant Bank was closed, or that the Bank had any knowledge or belief of their insolvency on the dates of the alleged deposits.

The Bank avers that, between the 2d of October and the closing of the account, the Bank paid out in good faith on checks of Rappal, Sons & Co. in favor of various persons, nearly $32,000, being considerably more than the amount claimed by complainants; that during the same time deposits to a considerably larger amount were made on the same account; that on the 2d of October the account was overdrawn, as is not uncommon in the course of business between the Bank and its customers at the Stockyards, but not on any subsequent day; that after the 2d of October and before having notice of any claim of the complainants, the Bank had, on checks drawn on the faith of the deposits made by Rappal, Sons

& Co. and in the fulfillment of its obligations as their banker, paid out much more than the amount claimed by the complainants, and had, in consequence of the deposits made after October 2, given up securities and other valuable considerations held by it; that it had paid out, before receiving complainants' notice of October 16, all money of Rappal, Sons & Co. which it held, and that at the time of receiving said notice it had no money belonging to them or to complainants, nor has it since had any.

It avers that the three drafts mentioned by complainants were received by it from the Kansas City Stockyards Bank for collection; that it performed its duty in regard to those drafts in every respect; and that the nonpayment of them (being sight drafts) was not an extraordinary occurrence, and was no notice or intimation of anything affecting the solvency of the drawers; and that the Bank does not know whether either of these drafts reached it before any of the cattle in question were sold or not.

The Answer of Rappal, Sons & Co. (Record, pp. 20–23) denies both generally and circumstantially that they received or sold any cattle belonging to the complainants or for their account, or deposited any proceeds of any such sale in the Union Stockyards National Bank. It also denies any indebtedness whatever to the complainants at the time of the commencement of the suit.

It avers that the 1,065 head of cattle in question were the property of W. P. Bowen & Co., live-stock dealers of

Kansas City; that W. P. Bowen & Co. consigned the cattle to them, and said cattle were sold on commission for account of W. P. Bowen & Co.

That Rappal, Sons & Co. deposited the proceeds of the sales with the Union Stock Yards National Bank to their own credit, without in any way informing the Bank, as they had no occasion to, of the source whence the money was derived; that these cattle were consigned, exactly as several previous consignments had been, through the complainants, in accordance with an arrangement between the complainants and Rappal, Sons & Co., by which the complainants were entitled to a share of Rappal, Sons & Co.'s commissions on each transaction; that the only interest the complainants had in the 1,065 head, was this share in the commissions; and that an account of the proceeds of the sales of all these consignments of cattle was rendered to the complainants for the sole purpose of informing them of the amount of commissions to which they were entitled.

The answer of the Rappals further avers that on the 1st of October and at the times when the 1,065 head of cattle were sold by Rappal Sons & Co., W. P. Bowen & Co. owed them on account of former transactions under precisely the same arrangement, $29,129.60, toward payment of which Rappal, Sons & Co. had a right to apply the $24,257.21, net proceeds of the 1,065 head; and that if the cattle so consigned were the property of the complainants, or were consigned on their account, then on the 1st of October and when the 1,065 head of cattle were sold and the proceeds received by Rappal, Sons & Co., the complainants were indebted to Rappal, Sons & Co. in a greater sum than the net proceeds of the 1,065 head.

The Decree (Record, pp. 29, 30) dismisses the suit as to the Rappals without prejudice, and orders that the Union Stock Yards National Bank pay to the complainants $5,880.25, "said sum being the net proceeds of 133 head of cattle belonging to the complainants and consigned by them to Rappal, Sons & Co., as live-stock commission merchants at the Union Stock Yards in Chicago on the 30th day of September A. D. 1885, which said 133 head of cattle were, on the 2d day of October A. D. 1885, sold by the said Rappal, Sons & Co. for the complainants and the money deposited by them in the said Union Stock Yards National Bank on that day, and which said sum is now on deposit in said bank;" and in like manner as to each of the other two consignments in question, the total being $24,257.21, with interest from October 16, 1885, and the costs of the suit. This is the whole of the decree.

ASSIGNMENT OF ERRORS.

We submit that the decree is erroneous,

1. In not dismissing the suit for want of jurisdiction, inasmuch as the allegations of the bill, if taken as true, show that the complainants have a complete remedy at law.

2. In finding that any of the cattle therein mentioned either

(*a.*) belonged to the complainants,

(*b.*) were consigned *by the complainants* to Rappal, Sons & Co. as live-stock commission merchants, or

(*c.*) were sold by Rappal, Sons & Co. *for the complainants.*

3. In finding that any of the money which was the net proceeds of the cattle therein mentioned, is now on deposit in the Union Stock Yards National Bank.

4. In ordering that the Union Stock Yards National Bank pay to the complainants $26,585.90 and costs, or any part thereof.

5. In dismissing the suit as to all other defendant *without prejudice.*

6. In not dismissing the suit as to all the defendants for want of equity.

BRIEF OF ARGUMENT FOR APPELLANT.

NOTE: Besides the passages of the Record referred to in this Brief, many others which afford important corroboration of the propositions advanced are referred to in the Argument which follows the Brief. It did not seem advisable to cite them here, because their significance would generally not be apparent without the observations which are connected with them there.

I.

The bill alleges that Rappal, Sons & Co. deposited with the defendant and appellant the Union Stock Yards National Bank, to their own account, and without the consent or knowledge of the complainants and appellees A. J. Gillespie & Co., money of the said complainants which it was the duty of Rappal, Sons & Co. to deliver to the complainants or hold subject to their order (Record, pp. 2 & 3); that the appellant bank, with knowledge of the rights of complainants, took the money, credited it to the account of Rappal, Sons & Co., and refuses to deliver it to complainants. (Record, p. 4.)

1. (See Argument, pp. 25–31, *post.*) These allegations, if proved, would entitle the complainants to a plain, adequate and complete remedy at law by an action for money had and received.

Clarke v. *Shee*, Cowper 197, p. 199.
Mason v. *Waite*, 17 Mass., 560, p. 563.
Merrill v. *Bank of Norfolk*, 19 Pickering, 32.
Bayne v. *United States*, 92 U. S., 642, p. 643.

2. (Argument, pp. 31–34, *post.*) Therefore, they cannot have any relief in equity.

Wright v. *Ellison*, 1 Wallace 16, p. 22.
Oelrichs v. *Spain*, 15 Wallace, 211, p. 227.
Root v. *Lake Shore & Mich. Southern Rwy. Co.*, 105 U. S., 189, p. 212.
City of Parkersburg v. *Brown*, 166 U. S., 487, p. 500.
Litchfield v. *Ballou*, 114 U. S., 190, p. 192.

II.

[See Argument, pp. 35–40, *post.*]

The decree commands the defendant and appellant the Union Stock Yards National Bank to pay

to the complainants and appellees the net proceeds of certain cattle, on the ground that those cattle were sold by Rappal, Sons & Co., for the complainants and those proceeds were deposited with the appellant bank. (Record, pp. 29 & 30). Not finding that Rappal, Sons & Co. owed the complainants anything, and on the contrary refusing to find anything against them and dismissing the bill as to them; (Record, p. 30) the decree fails and refuses to find facts justifying its mandate, and is therefore erroneous.

2 Daniell's Ch. Practice, * 986, * 990.

Lambert v. *Peyton*, 8 House of Lords Cases, 1, pp. 6, 12, 17.

Wabash & Erie Canal Trustees v. *Beers*, 2 Black, 448, p. 457.

III.

[See Argument, pp. 40–46, *post.*]

The three consignments of cattle which are now in question, being part of a long series of consignments to Rappal, Sons & Co. on the same account of W. P. Bowen & Co., and belonging to the same owners—whether W. P. Bowen & Co. was a fictitious name or not;

Testimony of T. E. Gillespie, Record, pp. 148–152, 156,

and those owners, whoever they were, being indebted to Rappal, Sons & Co. for advances previously made in excess of net proceeds, to an amount greater than the net proceeds of the three consignments in question;

T. E. Gillespie's Testimony, pp. 155 & 6.
F. J. Rappal, Jr.'s Testimony, pp. 68, 115, 275.
F. J. Rappal, Sr.'s Testimony, p. 112,

Rappal, Sons & Co., as factors, had a right to retain the proceeds of these three last consignments to make good the balance due them.

1 Parsons on Contracts, * 98 and Note *e*.
3 *Id.*, * 258 and Note *j*.

IV.

1. (Argument, pp. 47–57, 61–3, *post*.) The fundamental allegation of the bill that the complainants A. J. Gillespie & Co. were the owners of the cattle in controversy, is untrue.

A. J. Gillespie's Testimony, Record, p. 176.
T. E. Gillespie's Testimony, p. 157—last answer.

2. (Argument, pp. 47–51, 57–61, *post*.) Those cattle were owned by W. P. Bowen & Co., a part-

nership composed of Frederick J. Rappal, Sr., Wm. P. Bowen and Milton James.

F. J. Rappal, Sr's. Testimony, Record, pp. 110, 246, 249 & 250, 111.

James' Testimony, Record pp. 187 & 188.

3. (Argument, pp. 64-69, *post.*) The complainants (appellees) can therefore have no relief in this suit.

1 Barbour's Chancery Practice, 339.

Crockett vs. *Lee*, 7 Wheaton 522, pp. 526–7.

Carneal vs. *Banks*, 10 Wheaton, 181, pp. 188–9.

Harrison vs. *Nixon*, 9 Peters, 483, p. 503.

V.

[Argument, pp. 70-82, *post.*]

At the time when the cattle in controversy were sold by Rappal, Sons & Co., the complainants and appellees A. J. Gillespie & Co. had entirely given up the possession of them, held no *indicia* of ownership;

Testimony of F. J. Rappal, Record pp. 248–9.

" " F. J. Rappal, Jr., pp. 53, 285.

" " L. L. Rappal, pp. 282, 300, 362

" " F. J. Rappal, Jr., pp. 276–7.

Documents on pp. 70 & 73,

and had, therefore, no right in them and no lien on them.

Their right was solely that of unsecured creditors of W. P. Bowen & Co.

VI.

[Argument, pp. 82–91, *post.*]

The partnership of Rappal, Sons & Co., never made any contract with the complainants and appellees A. J. Gillespie & Co., and owed them nothing.

Testimony of F. J. Rappal, Record pp. 249, 250.
" " L. L. Rappal, Record pp. 293, 295.
" " F. J. Rappal, Jr., Record pp. 267, 268.
" " T. E. Gillespie, Record p. 154.

1 Parsons on Contracts, *181, *184.

VII.

[Argument, pp. 91–96, *post.*]

Two members of the partnership of Rappal, Sons & Co., having no part in the partnership of W. P. Bowen & Co.,

Testimony of F. J. Rappal, Record, p. 110.
" " L. L. Rappal, pp. 293, 296.
" " F. J. Rappal, Jr., pp. 268,

the partnership of Rappal, Sons & Co. was entitled and bound, in the interest of its legitimate creditors. to enforce its factor's lien against W. P. Bowen & Co., exactly as against any other debtor.

1 Story's Equity Jurisprudence, §§ 679, 680.

Haven v. *Wakefield*, 39 Ills., 509, p. 518.

Bolton v. *Puller*, 1 Bosanquet & Puller, 539, p. 546.

Ward v. *Brandt*, 11 Martin, 331, p. 429.

In re Buckhouse & Gongh, ex parte Flynn, 10 National Bankruptcy Register, 206.

VIII.

[Argument, pp. 97–106 *post*.]

Even if Rappal, Sons & Co. had had no claim against the owners of the cattle in question, they were, when they had lawfully sold the cattle, not trustees but merely debtors of those owners, and were not bound to pay them out of the proceeds of the cattle in preference to any other creditor.

Chapman v. *Forsyth*, 2 Howard, 202, p. 208.

Hennequin v. *Clews*, 111 U. S., 676, pp. 680, 682.

Ward v. *Brandt*, 11 Martin, 331, p. 429.
Ex parte Dale, Law Rep., 11 Chanc. Div. 772, p. 775.
Remarks of Fry, J. (pp. 702, 703); and Thesiger, L. J. (p. 723), in *Knatchbull* v. *Hallett*, Law Rep., 13 Chanc. Div., 696.

IX.

The defendant and appellant the Union Stock Yards National Bank, being a creditor of Rappal, Sons & Co., by having allowed them to overdraw their account for the purpose of making advances on cattle consigned to them,

Record, pp. 213, 306, insertion betw. pp. 468 & 469,

and also by reason of an overdue promissory note;

Record, p. 215,

and not knowing or believing but that Rappal, Sons & Co. had good right to dispose of the money deposited by them on the 2d and 3d, 5th and 6th of October, 1885 (Argument, pp. 106–113, *post*),

Record, pp. 217, 218, 238,

was entitled to appropriate that money to the payment of the overdraft and note, whether Rappal, Sons & Co. actually had good right to dispose of it or not; because

1. The *bona fide* taker of money or currency for value, is not affected by defects in the title of the

person from whom he received it. (Argument, pp. 113–115, *post.*)

Ford v. *Hopkins*, 1 Salkeld 283, p. 284.
Miller v. *Race*, 1 Burrow 452, p. 457.
Murray v. *Lardner*, 2 Wallace 110, pp. 121, 122.

2. Taking in payment of a pre-existing debt is taking for value. (Argument, pp. 115-119, *post.*)

Swift v. *Tyson*, 16 Peters 1, pp. 16, 19, 20.
Brooklyn City & Newtown R. R. Co. v. *Nat. Bank of the Republic*, 102 U. S., 14, p. 38.
Atlantic Cotton Mills v. *Indian Orchard Mills*, 147 Mass., 268, p. 273.
Misa v. *Currie*, Law Reports, 10 Exchequer, pp. 165, 168.

3. A banker has a lien on all deposits received by him on general account. (Argument, pp. 119–125, *post.*)

Morse on Banking, (2d Ed.), pp. 375, 42.
Commercial Bank v. *Hughes*, 17 Wendell, 94, p. 100.
Clayton's Case 1 Merivale 572, p. 608.
Misa v. *Currie*, L. R., 1 Appeal Cases House of Lords 554, pp. 569, 571.
Brandao v. *Barnett*, 12 Clark & Finnelly 787, pp. 805, 810.

McDowell v. *Bank of Wilmington*, 1 Harrington 369, p. 382.

Marsh v. *Oneida Central Bank*, 34 Barbour 298, p. 299.

Central Nat. Bank v. *Conn. Mutual Life Ins. Co.*, 104 U. S., 54, p. 71.

4. Deposits received *bona fide* on general account become the money of the banker. (Argument, pp. 126–127, *post.*)

Marine Bank v. *Fulton County Bank*, 2 Wallace 252, p. 256.

Thompson v. *Riggs*, 5 Wallace 663, p. 678.

National Bank of the Republic v. *Millard*, 10 Wallace 152, p. 155.

X.

[Argument, pp. 127–129 *post.*]

The fact that the overdrafts to the repayment of which the defendant and appellant the Union Stock Yards National Bank appropriated a part of Rap-

pal, Sons & Co.'s deposits, were allowed on the faith of Rappal, Sons & Co.'s representation that the money thus loaned would be used to make advances on cattle consigned to them, and the implied promise that it would be reimbursed out of the proceeds of such cattle when received and sold,

Record, pp. 213 & 214.

gives the appellant bank an additional equity to appropriate such proceeds, when deposited, to the repayment of such overdrafts.

Bank of the Metropolis v. *New England Bank*, 1 Howard 234, pp. 239–40.
6 Howard 212, p. 227.

XI.

[Argument pp. 129–131 *post*.]

Although the pre-existing considerations were, in accordance with the law as declared by this court, sufficient to validate the appropriation of Rappal, Sons & Co's, deposits to the payment of their debts to the defendant and appellant the Union Stock Yards National Bank, the equities of the appellant bank go further than this and justify it under the severest rule that has been laid down by any tribunal, in that on the faith of the legitimacy of these deposits, it paid on the four days October 2d, 3d, 5th and 6th, checks drawn by Rappal, Sons & Co.

for the benefit of others than the appellant bank, to the amount of more than $24,500;

Record pp. 112, 113.

and also surrendered and canceled the note and collateral securities of Rappal, Sons & Co. on which more than $7,000 was due, in exchange for a new note of only $4,006.73.

Record pp. 44, 81, 217.

1 Edwards on Bills (3d Ed.) § 452, pp. *321, *322.

Stalker v. *McDonald*, 6 Hill, 93, pp. 96, 113.

XII.

[Argument pp. 131–146 *post.*]

Even if the defendant and appellant the Union Stock Yards National Bank had been bound to take notice of circumstances which would lead a prudent man to inquire as to supposed claims of the complainants and appellees A. J. Gillespie & Co. upon moneys in the hands of Rappal, Sons & Co., there were no circumstances having any such tendency at the time when the deposits which made good the overdrafts were credited by the appellant bank on the account of Rappal, Sons & Co.

Record pp. 126, 195, 225, 245.

XIII.

[Argument pp. 146–148, *post.*]

Before taking the $2,993 which Rappal, Sons & Co. paid upon their $7,000 note, the defendant and appellant the Union Stock Yards National Bank did make inquiry, and received assurance that the money so paid was money which Rappal, Sons & Co. had good right to dispose of.

Record, pp. 214 & 215, 229 & 230, 282–3, 293–4, 220–1, 212.

XIV.

1. (Argument pp. 148–149, *post.*) The draft in regard to which the extraordinary telegraphic notice of non-payment was delayed, was not the property of the complainants and appellees A. J. Gillespie & Co., nor was it forwarded for collection by them, nor upon their account. On the contrary, it was the property of the Kansas City Stock Yards Bank; and was forwarded by that bank for collection upon its own account.

Record pp. 167, 168, 182.

Hence the defendant and appellant the Union Stock Yards National Bank was under no obliga-

tion to complainants to give any extraordinary notice of the non-payment of the draft referred to, and they can claim no relief against it for any delay in giving such notice.

Shearman & Redfield on Negligence § 54, p. 68.

2. (Argument pp. 149–150, *post.*) There is no evidence that the defendant and appellant the Union Stock Yards National Bank had made any contract binding it to give any other than the ordinary legal notice of non-payment of drafts sent to it for collection;

Record pp. 169–70, 223–4.

Nor that it had received or had been promised any compensation for giving notice by telegraph of such non-payment.

(Record pp. 316–17.)

3. (Argument pp. 150–152, *post.*) Even if it had been under contract to perform such extraordinary service, no compensation being received or provided for, it was bound to no more than ordinary diligence in the fulfillment of such gratuitous contract.

Shearman & Redfield on Negligence § 17, p. 22; §22, p. 26.

Thorne v. *Deas*, 4 Johnson 84, pp. 97, 101.

Such diligence was fully bestowed in enjoining the performance upon a ministerial employee

whom the managing officers of the appellant bank had reason to believe competent and faithful.

Smith v. *Cologan*, 2 T. R. 188, Note.

4. (Argument pp. 153–160, *post.*) It does not appear that the complainants suffered any damage by the delay in giving telegraphic notice of the non-payment of the draft in question.

Record pp. 205, 210, compared with the orders on pp. 70, 73, and the memoranda of purchase on pp. 457–463.

XV.

[Argument pp. 164–166, *post.*]

The statement as to the financial standing of Rappal, Sons & Co., made by the cashier of the defendant and appellant the Union Stock Yards National Bank to the Kansas City Stock Yards Bank on the 20th of July, A. D. 1885, was made for the sole use of that bank,

Record pp. 84, 171;

was made in good faith,

Record pp. 84, 104, 212, 233–4,

and was substantially correct,

Record pp. 105–6, 295, 201–2.

ARGUMENT FOR APPELLANT.

I.

The summary which we have already given of the allegations of the complainants' bill makes it plain, we submit, that the Circuit Court had no jurisdiction to entertain it; because it alleges a state of things for which there is a plain, adequate and complete remedy at law by an action for money had and received. It is not too much to say that the learned Circuit Judge from whose decree we appeal was of the same mind with us on this fundamental point, but deferred to the previous action of the learned District Judge, who had overruled the demurrer which we interposed on this ground. (Record, p. 28.)

1. The bill alleges that Rappal, Sons & Co. deposited with the defendant and appellant the Union Stock Yards National Bank to their own account and without the consent or knowledge of the complainants, money of the complainants, which it was the duty of Rappal, Sons & Co. to deliver to the complainants or hold subject to their order (Record, pp. 2 & 3); and that the appellant bank, well knowing the rights of the complainants and the absence of right in the Rappals, took the money, credited it to the account of Rappal, Sons & Co., thereby appropriating it to its own benefit, and refuses to deliver it to the complainants. (Record, p. 4.)

Of course the complainants can have no right to relief

unless their allegations are true. And if their allegations are true, they make out a perfect case to support an action at law for money had and received.

It is well settled that in a case of this kind, no actual privity of contract between the plaintiff and defendant is needed, but, as has been said by the Supreme Court of Massachusetts, "where one has received the money of "another and has not a right conscientiously to retain it, "the law implies a promise that he will pay it over."

Mason v. *Waite*, 17 Mass., 560, p. 563.

In the case of *Clarke* v. *Shee*, Cowper, 197, the plaintiff sued in this form of action to recover on account of money and notes which a clerk of plaintiff had collected from plaintiff's customers for him, and had paid to defendants "upon the chances of the coming up of the tickets in "the State Lottery of 1772, contrary to the lottery act "of the said year 1772." And the King's Bench held unanimously that the plaintiff was well entitled to recover. Lord MANSFIELD said (p. 199):

"This is a liberal action in the nature of a bill in equity, and if under the circumstances of the case it appears that the defendant cannot in conscience retain what is the subject-matter of it, the plaintiff may well support this action."

The case of *Mason* v. *Waite*, 17 Mass., 560, from which we have just quoted, presents a state of facts closely analogous to that of *Clarke* v. *Shee*, and to that alleged by the complainants here. Sargent, a stage-driver, being

entrusted with money of the plaintiff to transport from Gloucester, Mass., to Boston, paid it over wrongfully to the defendant, a gambler, who had won it from him at faro. It was held that the plaintiff could recover in an action for money had and received.

It is true that in both these cases the consideration on which the plaintiff's money was paid to the defendant, was an illegal one, which is not alleged by the complainants here; but this can make no difference as to the appropriateness of the action of *assumpsit* for money had and received as a remedy. There was as total an absence of privity of contract in the cases cited as in that now alleged. The only effect of the illegality of the transaction was to remove the necessity of notice of plaintiff's ownership, which would otherwise have existed. And such notice is expressly alleged by the complainants here.

In the case of *Merrill* v. *The Bank of Norfolk*, 19 Pickering, 32, this element of *quasi* criminality was absent. Merrill took a note in payment for a sale which he had made through a factor. The factor, who had received his commissions in full and had no interest in the note, which was payable to the order of the promissors and by them endorsed, procured the discounting of it at the bank, endorsing it himself. This was done at the request of the plaintiff, but the bank was unaware of this, and credited the factor with the proceeds. A few hours after this, they were attached by a creditor of the factor; and the bank, though informed by the factor that he him-

self had no interest in the money, refused to pay it over to the plaintiff on the ground of the attachment. It was held that the plaintiff could recover the money from the bank on the common counts in *assumpsit*.

Hence it is plain that he who, whether with honest or dishonest intent, receives the money of another from a third person, can be held to answer the owner in this form of action.

In the case just cited, the bank had no right to retain the money, because it had given no consideration for it. In the case alleged by the Gillespies, the appellant bank would have had no right to retain, because it took with notice of Gillespies' right. In either case the form of action would be equally applicable.

The principle that an action for money had and received will lie in a case like that alleged by Gillespies' bill, is expressly affirmed by this court in *Bayne* v. *the United States*, 93 U. S., 642. There Paulding, an army paymaster, had withdrawn funds which were in bank to his credit as a public officer, and indirectly handed them over to Bayne & Co., on what consideration (if any), does not appear. Bayne & Co. subsequently made an assignment for the benefit of their creditors, and the United States filed a bill to be declared a preferred creditor for the public money which had been handed over to Bayne & Co. as above stated. On the appeal of the trustees of Bayne & Co. from a decree in accordance with the bill, this Court say (p. 643):

"Bayne & Co. received it with a full knowledge that it belonged to the United States and had been obtained in manifest violation of the act of Congress. *The law* imposes on the firm an obligation, and *implies a promise* on its part *to refund the money*. Such a promise can be enforced by action. *Assumpsit* will lie whenever the defendant has received money which is the property of the plaintiff, and which the defendant is obliged by natural justice and equity to pay. (*Moses* v. *McFarlen*, Burrow, 1012.)

The ground of the decision here is evidently identical with what is alleged in Gillespies' bill, viz: that the defendants had received money of the plaintiff, knowing that it was his money and that the person from whom it was received had no right to dispose of it. In that case there was a need of resorting to equity in order to obtain a declaration of preference in the administration of an insolvent estate. No such need is suggested here.

The learned Circuit Judge discreetly remarks, in his Opinion, that the case of the *Central National Bank of Baltimore* v. *The Connecticut Mutual Life Insurance Co.*, 104 U. S., 54, "*seems* to be authority for" Judge Blodgett's ruling that the complainants' bill presents a case for equitable relief. An examination of that case will show that the caution with which the learned Circuit Judge has expressed himself was abundantly justified. Although it marks perhaps the utmost point to which this court may be expected to go in asserting equitable jurisdiction, it falls far short of justifying the present bill, and does not at all contradict the authorities just cited,

which establish the existence of a plain, adequate and complete remedy at law for such a wrong as the bill alleges.

In this case of the *Central National Bank of Baltimore* v. *the Connecticut Mutual Life Insurance Co.*, the court found that Dillon, general agent of the insurance company, had opened an account with the bank under the style of "general agent" for the purpose of keeping and at due times remitting to the company the premiums received by him as its agent (104 U. S., pp. 55 & 56), and that although he did at times deposit to this account moneys in which the company had no interest, and made drafts on it for his own use, yet much the larger part of the deposits was of moneys which he held for the company and did from time to time remit to it by checks against the account. (p. 56.) The bank assumed, without Dillon's consent, to appropriate a credit balance on this account to the payment of a note which he had given to the bank in his own name simply and for a loan to himself individually, in spite of the fact that Dillon owed, and attempted to pay by check in the customary manner, a balance to the company. It was held that the company was entitled in equity to enforce payment to itself of the balance thus sought to be appropriated; the court viewing the account as a fund held by Dillon in trust for the company, which did not lose its fiduciary character because moneys of the trustee's own were mingled with it, and holding that the legal title to this fund was in the trustee and in nobody else, so that the insurance company could not maintain an action at law for its share in it, any more than any other *cestui que trust* could maintain an action at law for the trust fund. The case was thus simply one where a trustee had been wrongfully deprived of the

trust fund and where his endeavor to appropriate it in conformity to the trust had been successfully resisted by the depriver; and it was held that the *cestui que trust* was entitled to relief in equity, as the trustee himself would have been entitled to relief at law. Whether in the radically different case where one deposits in a bank money to which he has not the legal title, with tortious intent to misappropriate it to the payment of a debt of his own to the bank, and the bank takes it with knowledge of the wrong and of the owner's right, which is the state of facts alleged here by the Gillespies,—whether in such a case, the rightful and legal owner of the money can maintain an action for money had and received against the bank which has wrongfully taken it, is a question which was not before the court at all. Hence there is nothing in this decision of *The Central National Bank* v. *The Connecticut Mutual Life Insurance Co.* to conflict with the line of decisions which had already settled the right of a person aggrieved as the complainants here profess to have been, to maintain an action at law for money had and received.

2. Since the action for money had and received will lie, there is of course a plain, adequate and complete remedy at law by which, supposing their allegations to be true, the complainants could attain precisely the same relief for which they invoke the equitable jurisdiction of the court.

This being so, the Circuit Court had no jurisdiction to

entertain their bill in equity, not only on the general principles which regulate equity jurisdiction, but also because of an express prohibition by statute, which is itself the necessary corollary of a constitutional provision. This has been repeatedly declared by this court.

The subject was very fully considered in the case of *Root* v. *The Lake Shore & Michigan Southern Railway Co.*, 105 U. S., 189, the particular question in that case being whether a suit in equity could be maintained against the infringer of a patent for no other relief than an accounting of profits and damages.

The court say (p. 212):

"This firm and indisputable doctrine of the English chancery has been recognized and declared by this court, in *Hipp* v. *Babin*, 19 Howard, 271, to be part of the system of equity jurisprudence administered by the courts of the United States, founded not only upon the legislative declaration in the Judiciary Act of 1789, 'that suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law,' but also upon the intrinsic distinctions between the different jurisdictions of law and equity."

And they cite the language of Mr. Justice Campbell, that

"Whenever a court of law is competent to take cognizance of a right, and has power to proceed to a judgment which affords a plain, adequate and complete remedy, without the aid of a court of equity, the plaintiff must proceed at law; because the defendant has a constitutional right to a trial by jury."

In Wright vs. Ellison, 1 Wallace, 16, the court say (p. 22):

We regard the case as a proper one for compensation, and in an action at law the complainant could hardly fail to recover. But this is a suit in equity. The rules of equity are as fixed as those of law, and this court can no more depart from the former than the latter. Unless the complainant has shown a right to relief in equity, however clear his rights at law, he can have no redress in this proceeding. In such cases the adverse party has a constitutional right to a trial by jury. The objection is one which, though not raised by the pleadings, nor suggested by counsel, this court is bound to recognize and enforce.

In *Oelrichs* v. *Spain*, 15 Wallace, 211, the court say (p. 227):

It has been insisted by the counsel for the appellants that there is a complete remedy at law, and that the bill must therefore be dismissed. Such must be the consequence if the objection is well taken. In the jurisprudence of the United States this objection is regarded as jurisdictional, and may be enforced by the court *sua sponte*, though not raised by the pleadings nor suggested by counsel.

In the case of the *City of Parkersburg* v. *Brown*, 106 U. S., 487, the court say (p. 500):

The bill as filed asked for equitable relief, and sought to charge the city as a trustee and to reach the property covered by the deed of trust. The relief granted by the decree was a simple money judgment against the city for the interest due on the bonds at the date of the decree, based on the legal liability of the city to pay the bonds

and coupons. For this there was a plain, adequate and complete remedy at law in each bondholder if the city was thus liable. So that the decree made could not be sustained in any event.

In the case of the *City of Litchfield* v. *Ballou*, 114 U. S., 190, the decree was reversed and the bill dismissed, one ground being stated by Mr. Justice Miller (who delivered the opinion of the court) as follows (p. 192):

> If the city is liable for this money, an action at law is the appropriate remedy. The action for money had and received to plaintiff's use is the usual and adequate remedy in such cases, where the claim is well founded; and the judgment at law would be the exact equivalent of what is prayed for in the bill, namely, a decree for the amount against the city, to be paid within the time fixed by it for ulterior proceedings. In this view, the present bill fails for want of equitable jurisdiction.

These words apply exactly to the bill now before the court. And in view of them, and of the other often repeated declarations of this court to the same effect, we do not see that it has any choice but to remand this case to the Circuit Court with directions to dismiss the bill.

II.

The decree is erroneous on its face in declining to find facts sufficient to justify the order which it makes.

Even if the cattle in controversy did belong to the complainants, and the Rappals did receive them as factors, and sell them for the complainants and deposit the net proceeds with the bank, and that money did remain on deposit in the bank, it would not follow that the Rappals owed the complainants anything. And if they did not, the deposit of the money in the bank could not charge the bank with any trust in favor of complainants.

This issue is expressly tendered in the answer of the Rappals. They allege that the three consignments of cattle in question were sent to them in the same manner, on the same terms and conditions, and from the same owners, as a number of previous consignments; that the sale of those previous consignments had brought those owners into debt to the Rappals for more than $29,000, whereas the net proceeds of the three consignments in question were less than $25,000; and that if the allegation of the complainants that they were these owners be true, then the complainants were thus in debt to the Rappals for more than the sum which the bill claims; so that the appropriation of the money claimed by the bill did not entitle the complainants to receive anything but, on the contrary, left them still in debt to the Rappals. (Record, p. 22.)

The answer of the bank also denies in general terms any debt of the Rappals to the complainants. Into any further particulars it could not properly go, as the transactions in cattle out of which the controversy arose, were outside the range of its knowledge. (Record, pp. 15–16.) But the general denial clearly imposes upon the complainants the necessity of establishing such a debt.

It does not appear from the decree that they have done so. Indeed, the precise and controlling issue raised by the answer of the Rappals is purposely left open and undetermined by the dismissal of the bill as to them, without prejudice. (Record, p. 30.)

It comes then to this; that the decree not only omits but advisedly declines to find that the complainants were entitled to claim anything whatever from the Rappals; at the same time that it requires the appellant bank to pay over to the complainants more than $24,000, because the Rappals had deposited that sum with it. (Record, p. 29.)

The opinion of the court below in like manner entirely ignores the decisive question whether, on the whole series of transactions between the complainants and the Rappals, the latter owed anything or not. (Record, pp. 26–8.)

The mandatory part of the decree is thus destitute of foundation either in the facts found by the decree or in the opinion of the court.

This is not a merely formal defect in the decree. Supposing, for the sake of argument, that it was correct in finding that the cattle belonged to the complainants and were sold by the Rappals as factors for them, it could

not further find, without disregarding all the evidence, that the complainants had any right to the proceeds. To the proof of this assertion, we shall ask leave to call the attention of this court a little further on. We make the assertion now for the purpose of pointing out that the court below was led to make the decree it has by overlooking altogether a point essential to the complainants' case.

A decree thus defective evidently violates the fundamental principles of procedure in equity. Daniell defines a decree as follows:

"A decree is a sentence or order of the court pronounced on hearing and understanding *all the points in issue, and determining the right of all the parties to the suit.*"

2 Daniell Ch. Pr., * 986.

Again he says:

"*It is a fundamental principle* of courts of equity to make as complete a decision upon *all the points* embraced in a cause as the nature of the case will admit, so as to preclude * * * all further litigation between the same parties."

Id., * 990.

We have found no case where a decree thus not only omitting but refusing to justify itself, and as it were emphasizing its own baselessness, has come before the courts for review. There are cases, however, which lay down principles from which we think it may plainly be gathered how such a decree would have been treated. In *Lambert* v. *Peyton*, 8 House of Lords Cases 1, the decree appealed from evoked expressions of disapproval from several of the judges, because it did not deal with

all the points of the case, and did not make proper declaration of the rights of the parties. It was not reversed on that account, however, because in that case it was apparent that the omissions were not material as regarded the rights of the parties appealing.

It appears from the report that Mr. Butt, in supporting the appeal, complained that there was no declaration of the rights of the parties under the deed in controversy. (p. 6.) On this point Lord Cranworth said, in giving judgment (p. 12):

I agree with my noble and learned friend on the woolsack that this decree ought not to be disturbed. I purposely guard my opinion by the expression that I think it ought not to be disturbed; because I must say I think it is a matter of regret that the decree did not proceed to determine more explicitly what the rights of the parties were, instead of merely directing some conveyances and giving some consequential directions which, no doubt, were the results of the conclusion at which the court had come in its own mind. What the rights of the parties were, I do not see expressly declared. But looking to the articles (for so I must call them) with the object of carrying them into execution in this case, I think that this decree does substantial justice to all the parties concerned.

To a like purport on this point is the remark of Lord Chelmsford (p. 17):

It is admitted on the part of the appellants that, although the decree is defective in not providing for the specific performance of the articles with regard to the Lakeen estate, yet, if so executed, the appellants would have had no right whatever. Although, therefore, the decree ought to have contained some declaration as to the mode in which the Lakeen estate should have been settled, yet the appellants have no ground of objection in consequence of this defect in the decree.

It is plain from this that the judges regarded the failure of the decree to make an explicit declaration of the

rights of all the parties, as an error on account of which an appeal would be entertained; but in the case then before them, the error was not material to the rights of the parties appealing.

In our case the omission is material. In avoiding any declaration of the right of the matter as between the complainants and Rappal, Sons & Co., the learned Circuit Judge has declined to find what is the necessary foundation of any decree against the party now appealing.

In the case of the *Wabash & Erie Canal Trustees* v. *Beers*, 2 Black, 448, this court prescribed the correction of an analogous, though far less radical, defect in the decree appealed from. The complainant Beers filed a bill in behalf of himself and all other holders of the same class of bonds. No other bondholders of this class appear to have intervened; and the Circuit Court rendered a decree declaring the complainant's bonds a prior lien on the property in question, ordering the payment of the amount due him and giving him leave to apply for a receiver in default thereof. The appeal of the canal trustees against this decree was not sustained, but this court say (p. 457):

"The record affords strong reason to believe that the other 198 bonds of the same issue are outstanding, with arrears of interest unpaid to the same extent as plaintiff's; yet the decree makes provision for them. *This we think is error.* The bill in this case must be treated as in the nature of a creditor's bill, although not strictly of that class. The decree *should declare the equality of lien* of all these bondholders with plaintiff and should provide for them the same relief which it gives to him. And the case should be referred to a master to ascertain who these bondholders are, about which we presume there will be little difficulty, and to notify them to come in and share in the

fruits of the decree on paying their proportion of its expense. For this purpose the case is remanded to the Circuit Court with, instructions to proceed in accordance with this opinion."

Here the Court declared the decree erroneous for want of a declaration as well as an order, and also directed what that declaration and order should be.

III.

At the time when Rappal, Sons & Co. sold the 1,065 head of cattle mentioned in the bill and received the proceeds, the owners of those cattle, whoever they were, were indebted to Rappal, Sons & Co. for former advances, to an amount greater than those proceeds; so that even if the complainants A. J. Gillespie & Co. were the owners, they had no right to the proceeds.

The three consignments of cattle in controversy were the last in a series of transactions of exactly the same nature, which had been in progress since April, 1885; the cattle belonging to the same owners and being consignal to the Rappals upon precisely the same terms. These transactions were all entered by the complainants in their books under the form of an account between them-

selves and W. P. Bowen & Co., W. P. Bowen or Bowen & Rappal, as the other party is variously designated in the account; all these names, however, being intended to denote the same party and the same account. This appears from the testimony of Thomas E. Gillespie, one of the complainants. After testifying in detail to the purchase and forwarding to Rappals of the three consignments of cattle in controversy, being respectively, 133 head, 815 and 121, (Record, pp. 140–145.) he says in substance:

(Record, p. 152.) This is a book for memoranda of shipments, going back to June 29, 1885. It is the book of original entries. The shipments of cattle referred to yesterday, the 133 head, the 815 and the 121, all appear in it under the name of W. P. Bowen. The names "Bowen & Co." and "Bowen & Rappal" also appear in this book; they all mean the same account. This account was opened sometime in April, 1885.

(P. 148). Statements of account were rendered to Rappal, Sons & Co. in the ordinary course of business.

(P. 147). Exhibit 8 (Record, pp. 352–8) is a statement of account with W. P. Bowen & Co., taken from our office ledger, and sent by A. J. Gillespie & Co. to Rappal, Sons & Co. It runs from April 20 to June 15, 1885. The ledger account from which it is taken is headed "Bowen & Co.," or "W. P. Bowen & Co.," or "Bowen & Rappal."

(P. 148). "Q. Then you had an account with Bowen & Co. on your books from April 20 until what time? A. March 10, (1886) is the last entry."

(pp. 150–2). Exhibit 19 (Record, pp. 464–8) is a statement of the same account, taken from our books, showing all the transactions with W. P. Bowen & Co., or Bowen & Rappal, from August 21 to October 10, inclusive. The ledger account from which it is taken is headed "Bowen & Rappal," and again "W. P. Bowen & Co.," and again "W. P. Bowen;" all intending the same account.

By looking at the Exhibit itself, the first of the three drafts in controversy will be found represented in the last credit item on page 466; the second by the last credit entry in the upper part of page 467—"Oct. 1, d'ft $19,-505.62," and the third by the entry "Oct. 3, d'ft $691,70," about the middle of the lower group of credit entries on the same page. The same three drafts will be found debited (on their being reported unpaid) at the close of the second group of debit entries on page 468, as "ret'd d'ft & fees."

Two other statements which nearly complete the history of this account, having been sent by the complainants to the Rappals, were produced and identified (without controversy) by Frederick J. Rappal, Jr. (Record pp. 270 & 271,) and are Exhibits 5 and 2 of his deposition. Exhibit 5 (p. 480) extends from June 15 to July 1 inclusive; and Exhibit 2, (pp. 470–2) from July 1 to August 12 inclusive. These statements are, by means of balances carried from one to the other, continuous up to August 12, the point where Rappal's Exhibit 2 closes; the last consignment included in it, however, being of August 4. The next statement (Gillespie's Exhibit 19) begins with August 19, but the first consignment charged in it is dated September 2. (Record p. 464.)

The gap between these two dates, August 4 and September 2, is filled sufficiently for our present purpose by eighteen detailed statements of particular consignments, each accompanied by a draft made on the same account. These statements were sent by complainants to the Rappals, and are a part of Exhibit 11 of T. E. Gillespie's testimony. They will be found on pp. 416—435 of the Record. They show the same variety of designation which has already been noticed as indicating the

same ownership—" acc. Bowen & R.," " W. P. Bowen & Co."; " Bowen & Co.", Frederick Rappal, Jr., testifies that the letters and statements composing this Exhibit 11 were received by the Rappals about the times of their several dates: (Record p. 271.)

They had previously been shown to Thomas Gillespie, who made no question of their genuineness. He had just before recognized expressly the genuineness of two similar collections; and the absence of any such express recognition of Exhibit 11 is doubtless due to inadvertence on the part of the cross-examining counsel, if indeed it be not a mere clerical error in writing out the deposition. (Record p. 148.)

We have thus complete evidence in writing, furnished by the complainants themselves, and concurring with all the oral testimony, of a long series of consignments and drafts, of which the three in controversy are a part, all on the same account and (according to all the indications) with the same ownership.

Thomas Gillespie expressly says they were all consigned under the same arrangement. (Last answer on p. 156)

The complainants regularly drew upon the Rappals for the cost of all cattle consigned to them on this account, and the Rappals regularly paid all the drafts up to the three now in controversy. This is the testimony of Thomas E. Gillespie. (Record, pp. 155-6.)

The cattle consigned on this account brought, on the whole (after allowing for expenses), a good deal less than the owners paid for them; so that by paying complain-

ants' drafts for their cost, Rappals had, by the time the first of the three drafts in controversy reached them, paid out on account of the owners of these cattle more than $29,000 in excess of what they had received. As between the Rappals and the owners, therefore, the latter were indebted to the former more than $29,000; hence, after the $24,000 net proceeds of the three consignments now in question had been applied to the cancellation of this debt, there remained still due the Rappals from the owners of these cattle, whoever they were, a balance of about $5,000.

This is the testimony of Frederick J. Rappal, junior, one of the firm of Rappal, Sons & Co. (Record, pp. 68, 115.)*

This testimony was given in the course of examination and cross-examination as a witness for the complainants in July, 1886. (Record, pp. 52, 112.) Subsequently all three of the complainants severally gave their testimony at Kansas City, where their place of business was, two of them in October, 1886, and the other in December, 1886. (Record pp. 188–9, 328–9.) But no attempt was made to contradict, impair or question this statement of Rappal.

It appears, indeed, to have been recognized as true. So complainants' counsel evidently treated it. In examining Frederick J. Rappal, Senior, who had also been called as a witness for complainants, he put this question.

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* NOTE. On p. 68 the statement "We *shipped* to them "right along," is evidently a *lapsus linguae*. Probably "shipped" should have been "remitted"; the idea of a shipment by Rappal, Sons & Co., is entirely foreign to every other part of the evidence.

"Isn't it a fact that on the 1st of October Bowen & Co. were very largely indebted to Rappal, Sons & Co.?"

To which the witness answered:

"I knew that after I came home; I found there was some $29,000 or so; I didn't know it at the time." (Record, p. 112.)

So afterwards when Frederick J. Rappal, jr., was again examined on behalf of the defendants, complainants' counsel in cross-examination suggested in like manner, as a recognized fact, that there had been a heavy loss on (to use his own words) "the cattle shipped by W. P. Bowen "& Co., or Bowen, James ——. I mean that account, "whoever the parties were." (Record, p. 275.)

Bearing in mind that the debt in question resulted entirely from the payment of complainants' drafts for the cost of the cattle, we find it a fact admitted on all hands that at the time when complainants allege that as owners they were entitled to the net proceeds of the cattle in controversy, the owners, whoever they were, were indebted to the Rappals about $5,000 more than those net proceeds, on account of advances on previous consignments in excess of the proceeds of those consignments.

That a factor has a right to reïmburse himself out of the proceeds of goods consigned to him, for his advances to the consignor, whether on the particular goods in question or on others previously consigned, is a proposi-

tion so universally recognized that we shall hardly be expected to cite authority for it.

Parsons (on Contracts i *98) says:

A factor has a lien on the property in his hands for his commissions, advances and expenses.

And again (Note *e*):

The factor has a general lien, to secure all advances and liabilities, upon all goods which come to his hands as factor.

And again, iii *258:

The factor's lien is both particular and general. * * * Since the case of *Kruger* v. *Wilcox*, decided in England in 1755, their right to a general lien for the balance due, upon all goods of the principal in their possession, has been established as resulting from the usages of trade.

Of course he means to include not only goods, but the money received from the sale of goods, and this is expressly included in the language of Lord Hardwicke in *Kruger* v. *Wilcox*, quoted in Note *j*, as follows:

All the four merchants, both in their examination in the cause and now in court, agree that if there is a course of dealings and general account between the merchant and factor, and a balance is due to the factor, he may retain the ship and goods, *or produce*, for such balance of the general account, as well as for the charges, customs, etc., paid on the account of the particular cargo.

The term "produce" here is evidently equivalent to the now more usual "proceeds."

When therefore, exercising the ordinary right of factors, Rappal, Sons & Co. deposited the net proceeds of the three consignments in controversy to their own account, to apply upon the debt of the owners to them, there is evidently nothing in that on which to found a require-

ment that their depositary, the appellant bank, should pay those proceeds over to the complainants on account of the complainants' supposed ownership of the cattle.

The demand of the complainants is thus seen to be totally destitute of foundation.

IV.

1. The allegation of the bill, that A. J. Gillespie & Co., the complainants, were the owners of cattle in the controversy, is false. It is manifest from the evidence that Bowen & Co., who appear in the accounts of the complainants, as well as of the Rappals, as the nominal owners, were the actual owners.

It will be recollected that the live-stock commission firm of Rappal, Sons & Co., was composed of Frederick J. Rappal and his two sons, Lawrence L. Rappal and Frederick J. Rappal, Jr., and that its place of business was at the Union Stock Yards, Chicago. Frederick J. Rappal the elder also entered into a partnership at Kansas City, in the spring of 1885, with Wm. P. Bowen and Milton James for the entirely distinct business of buying cattle and sending them to market for sale, under the firm of W. P. Bowen & Co. Of this partnership, which was without any written articles, the two sons were not members, and in this business they were not at all concerned.

The elder Rappal, on behalf of W. P. Bowen & Co., made an oral contract with the Gillespies, the complainants, whereby complainants were to advance the money with which to buy the cattle, and were to take charge of forwarding them to market, and to keep the accounts of the business, receiving in consideration of the advance and the service $5 a car-load, which was afterwards, and after a brief suspension of the contract, reduced to $2.50. They were to forward the cattle to Rappal, Sons & Co. for sale on commission. Bowen & Co., through the elder Rappal, directed them, when forwarding each consignment of cattle, to draw on Rappal, Sons & Co. for the money advanced on that consignment. Rappal, Sons & Co., however, did not agree to pay any such drafts. The elder Rappal, Bowen and James, attended to the buying of the cattle.

Under this arrangement Bowen & Co. were entitled to the profits, were chargeable with the losses, and were bound to repay complainants the money advanced for the purchase of the cattle. The expectation, of course, was that this should be effected by the payment by Rappal, Sons & Co., of the drafts made upon them, and that the cattle would bring enough in the Chicago market to reimburse Rappal, Sons & Co. It was under this arrangement that the three consignments of cattle in controversy were bought by Bowen & Co. and forwarded to the defendants Rappal, Sons & Co.

As we have already seen (pp. 40, 41 of this Argument), the account relating to the cattle purchased under this arrangement was kept by complainants as between themselves and Bowen & Co., or other equivalent name.

The accuracy of our statement is similarly indicated by the fact that, in the whole series of transactions, the sale ticket, or memorandum of purchase, given to the buyer when the sale was negotiated, uniformly indicated Bowen & Co. as the purchasers, the words being "Acc't. of Bowen," or "Acct. Bowen," no other name being used in any such way as to suggest that it is that of the buyer. Thomas Gillespie testifies that the cattle were "weighed in the name of Bowen." (Record, p. 154.) A number of these tickets have been put in evidence, and will be found on pages 149 and 457 463 of the Record. The meaning of them is explained by Thomas E. Gillespie on p. 149. These tickets were sent by complainants to Rappal, Sons & Co. at the same time with the orders for the delivery of the cattle, or with complainants' statement of cost, etc. (Record, pp. 284, 285.)

In perfect harmony with these indications is the testimony of Frederick J. Rappal, Sr. He states that he went to Kansas City in April, 1885, and remained there the greater part of the time till October. (Record, p. 252.) In April he formed a partnership there with William P. Bowen and Milton James in the business of buying cattle and sending them to the Chicago market for sale. (Record, pp. 110-246.) The partnership agreement was entirely oral. (Record, p. 252.) Bowen lived in that

region and had previously made a few consignments of live-stock to Rappal, Sons & Co., for sale. (Record, pp. 251–2.) James was working for the complainants at Kansas City, and at the same time buying cattle occasionally on his own account. He had one-third interest in the partnership, but was out of it for three or four weeks in July. (Record, pp. 252–3.)

Neither partner put any money into the business (Record, p. 253), but the firm made a contract with A. J. Gillespie & Co., the complainants, to advance the money to pay for all cattle which Bowen & Co. bought, attend to forwarding them to market (Record, pp. 246, 247, 254) for Bowen & Co., and keep all the accounts of the business. This arrangement was never changed, except as to the amount which the complainants received from Bowen & Co. in compensation for complainants' services and for the use of their money. (p. 251.)

Under this arrangement, Bowen & Co. bought a large number of cattle at Kansas City between April and October, some 1,200 or 1,500 car-loads, Rappal thinks. (pp. 252–254.)

The elder Rappal further testifies that it was part of the arrangement that the cattle were to be consigned to Rappal, Sons & Co. for sale at Chicago.

Record p. 254—" They were billed 'W. P. Bowen & Co., on acct. of A. J. Gillespie & Co.' [This transposes by a *lapsus* the actual order of the names] to Rappal [,Sons] & Co. Q. You mean to say that was done in all cases? A. Yes, sir.

P. 257—" Q. I am asking you how Rappal, Sons & Co. came into possession of these cattle? A. * * Because of the agreement Bowen & Co. had with Gillespie & Co."

He also testifies that it was part of the arrangement

between Bowen & Co. and the complainants, that the latter should be reimbursed their outlay by drawing on Rappal, Sons & Co.

P. 247—"I, as a member of Bowen & Co., made the arrangement with A. J. Gillespie to draw on Rappal, Sons & Co. for the advance of this money."

He further testifies that the three consignments of cattle now in controversy were bought by Bowen & Co. for their own account, A. J. Gillespie & Co. advancing the money to pay for them in pursuance of this arrangement, and Bowen & Co. becoming their debtors for the advance. (Record, pp. 249 and 250, 111.)

The complainant Andrew J. Gillespie, with whom the agreement was made, substantially confirms Rappal in every point of the testimony which we have quoted, except as to the partnership with Bowen and James. This he does not deny with any certainty.

He says (Record, p. 176):

"He [Rappal, Sr.] came to me and said he wanted to buy and ship some cattle to his house, [Rappal, Sons & Co.] and he wanted to make arrangements for me to pay for the cattle and forward to them. We made an arrangement. He was to buy the cattle; we were to pay for them and forward them to his house in Chicago. We were to draw sight drafts against the cattle to get our money out of them."

These words, "to get our money out of them," are worth noticing; the Gillespies were to receive not the net proceeds of the cattle, as they pretend in their bill, but simply what they had advanced on the cattle, no matter whether the sale produced more or less than that. This plainly negatives the idea of ownership. We shall

refer further on to Gillespie's additional assertion, "We "were to hold the cattle as ours until the drafts were "paid." For the present we ask the attention of the court simply to the words which we have quoted.

A. J. Gillespie, being asked in cross-examination to give as correctly as possible the words used by Rappal in making the original agreement, said (Record p. 183):

"He said he wanted to buy and ship cattle to Chicago; that he thought *he could make some money;* * * * * he wanted to know how *we would do the business*, and we made arrangements that he was to give us 25 cents a head; we were to pay for the cattle and hold them in our possession *till we got our money back.*"

The words, "hold them in our possession," the spuriousness and futility of which will become apparent farther on, do not detract from the positive declaration that the profits of the business (and of course the losses too) were Rappal's; that Gillespies were hired to take care of the business of forwarding the cattle; and that they lent, and were to be repaid in any event, the money necessary to pay for them.

No one but the elder Rappal and the elder Gillespie appears to have been present at the conversation in which the arrangement between the Gillespies and W. P. Bowen & Co. was made. Another of the complainants, however, Thomas E. Gillespie, testifies that very soon after the contract was made, some time in the early part of April, 1885, Rappal told him the terms of it. Being asked to state everything that he had learned directly from Rappal about the contract, he says (Record, p. 163):

He said he thought *he could make some money* by shipping cattle to Chicago, and that he had made arrangements with my father for us to pay for them and forward them to his house in Chicago. I asked him how he wanted us to do this business for him. He said we were to buy the cattle and make out a statement and send it to the boys, and send the draft and ship the cattle the same as we were doing for other parties.

Q. Was that all of the conversation? A. That is about all I remember in regard to the matter.

The intent of the expression "buy the cattle" must be simply to make the most of the fact that Gillespies were to pay for them; all the other evidence, including the testimony of the elder Gillespie, shows that everything else in the purchase of the cattle was done by Rappal, Bowen or James. Thomas himself elsewhere testifies that Gillespies knew what cattle they had bought and what they were to pay by the vendor's presenting them a memorandum of the sale endorsed "W. P. B." "Bowen," or "Bowen & Rappal." (p. 157.)

The idea of ownership in the complainants is no less clearly excluded by the account which Thomas E. Gillespie gives of the arrangement as he understood it while acting under it. We quote from his examination by his own counsel. (Rec., p. 157.)

Q. Did the firm of A. J. Gillespie & Co. have any other interest in those transactions than that of holding the cattle until their drafts for *the amount they had paid out*, including exchange, were paid to them, and their commission for doing this business?

A. *They had no other.*

We shall see further on that the suggestion of "holding the cattle" is an afterthought, as foreign to the original agreement as it is to everything that was done under it. What we now ask attention to is the entirely

voluntary admission that complainants had no other interest in the matter than to get paid for the work they had done and the money they had lent.

If we were to define the term "owner of a chattel" as "a person having no right to determine the disposition of it and no right to use it, who can neither gain by an increase nor lose by a diminution of value, and who is entitled, whatever becomes of it, to receive from others just what he has paid on account of it, together with a stipulated hire for services rendered about it, and no more," we should exactly describe the relation of the complainants to the cattle in controversy, as they state it themselves, and should at the same time essentially contradict all former definitions and all common understanding of the meaning of the term.

That the complainants merely loaned their money and hired out their services as accountants and forwarders to the real owners of the cattle, is further evident from the fact that after the business had been going on for some months, it was taken away from the complainants altogether for a short time, because Rappal deemed their charges for the loans and services exorbitant; the purchases and shipments on account of W. P. Bowen & Co. going on as before, but the owners undertaking to manage the business themselves, with some help from the Kansas City Stock Yards Bank.

After a few shipments had been made in this way, the Gillespies consented to reduce their charge by half, and Bowen & Co. employed them again, until and including the particular shipments now in controversy. This matter is related as follows in the cross-examination of the elder Rappal. (Record, pp. 261 and 2):

Q. Now, then, you paid A. J. Gillespie & Co. $2.50 a car for doing this business? A. Yes, sir; W. P. Bowen & Co. did that.

Q. And that is all they got out of it? A. $2.50 a car—yes, sir, for taking care of them and shipping them.

Q. For paying for the cattle and shipping them, and for the use of the money? A. Yes, sir. * * *

Q. At first they got 25 cents a head for cattle, didn't they? A. $5 a car in the first place.

Q. Then after that had been going on for a while, you undertook to ship yourself to Chicago, didn't you? A. Bowen & Co. made a few shipments.

Q. And your books got confused? A. We didn't keep any books. Bowen & Co. didn't keep any books, and we let—really, Mr. Connelly, at the bank, he kind of helped us get in the tickets, and helped us out.

Q. Now, then, your books got confused, didn't they? A. Got no books.

Q. Your accounts, then? A. I don't know as they did.

Q. Then you made a new arrangement with A. J. Gillespie & Co., didn't you? A. A. J. Gillespie came—

Q. No, I am asking you—answer my question. Did you make a new contract with A. J. Gillespie & Co.? A. W. P. Bowen & Co., yes, sir.

Q. By which you were to pay them $2.50 a car? A. Yes, sir, for advancing the money and taking care of the cattle.

On this point Thomas E. Gillespie testifies in substance as follows (Record pp. 163–4):

After we had been doing the business for Rappal for some time, he said he thought we were getting too much money for doing too little work, and that some other parties had offered to handle the stuff for less money. I told him we couldn't do it for any less. He charged his account, and I think Snider & Co. bought his cattle for him. Some four or five days afterwards he came to me and said: "I have got mixed up and want you to help me out." I said: "I will help you out." The next day

he said: "It has been too much trouble for me; you had better ship the cattle for me, you can do it better than I can." I said, "All right." He did not say anything more to me; but a couple or three days after he told me he had made arrangements with father for us to do the business for the same as the other houses had offered to do it for, $2.50 a car. This was about a month or a month and a half before this matter [the present controversy] came up.

Gillespie is evidently mistaken in supposing—he does not profess to be sure—that Snider & Co. had been attending to the business for Bowen & Co. in the interval. This appears not only from what Rappal himself says but also from the fact that Snider & Co. were a commission house doing a considerable business, and Bowen & Co.'s transactions would not have got "mixed up," if they had had charge of them. Moreover, the fact that Rappal, notwithstanding his embarrassment, readily renewed his bargain on the same terms that he had demanded before breaking off, shows that the Gillespies had not intended to let their customer go and makes it probable that they were more active in bringing about the renewal than Thomas would have us believe. This is evidently what Rappal was trying to say, when complainants' counsel cut him off.

Mainly to illustrate the difficulty of disentangling the truth from the elder Gillespie's testimony, we quote also what he says on this point, answering the questions of his own counsel (Record, p. 176):

Q. Was there a change made in the condition of that agreement? A. Yes, sir, after a month or so, two perhaps.

Q. What was the change? A. He said he could get it done for $2.50 a car. I told him to go ahead and get it done, that we couldn't do it for any less. He went

to Snider's and he went to the bank about it. Afterwards, one day he came to me and said he would like to have us do the business for him if I would take it at the same rates. I told him we would try it again. So he went to buying cattle and marking the tickets for our office, A. J. Gillespie & Co.

One would hardly gather from this—what is perfectly clear from the other testimony which we have quoted, and is implied in the questions of complainants' own counsel—that when the arrangement was revived it was on condition of Gillespies' being content with half what they had been exacting.

But all the testimony alike shows that the connection of the Gillespies with these transactions was entirely at the option of Rappal and his associates, who employed or dismissed them at pleasure according as their rate of commission and interest was satisfactory or not.

As to the partnership of W. P. Bowen & Co., the elder Gillespie says, in substance, (Record, p. 178):

"His directions were, to keep the account 'account of of Bowen & Co.'; but it was his account. As to any one else being interested in the transaction, *I don't know whose the interest was;* our business was at his orders—Mr. Rappal's orders—to ship the cattle to Rappal, Sons & Co. *I don't know whether Bowen or James had any interest* in the business; neither had anything to do with it, so far as we were concerned."

In cross-examination, however, he says (p. 185), that he thinks the elder Rappal *and Bowen* bought all of the cattle that were shipped on account of Bowen & Co.; and that he saw Bowen and Rappal together every day.

Moreover, the letters of complainants to Rappal, Sons & Co. show that they were aware of both Bowen and James being actively engaged with Rappal in purchasing cattle for account of Bowen & Co.

The two collections of letters and statements sent by complainants to Rappal, Sons & Co., Exhibits 9 and 10 of Thomas E. Gillespie's Deposition, identified by him as in his own handwriting or his father's or that of a brother employed by the complainants' firm, (Record, p. 148) include the following passages:

April 28—We send you 2 cars cattle, 44 h'd. for acct. of Bowen. * * * They hold cattle too high here, Bowen thinks. (p. 363.)

April 29—We send you 11 cars acct. Bowen. * * * P. S. Bowen said that your messages are a little late, and other buyers get the start on the best lots. (p. 364.)

June 16—F. J. R. and others have gone to the distillery, and think will load 12 cars there to-night. (Record, p. 382.)

June 20—James and Bowen has gone to ship 6 cars more stillers to-night, that will go on this train. (p. 386.)

June 24—We ship or forward 2 cars cattle that Bowen bought at Paola. (p. 390.)

June 25—F. J. R. and James went to Leavenworth to-day to buy the Glucose cattle. (p. 391.)

June 26—They closed trade to-day for 1,900 cattle at the Leavenworth Glucose works. (p. 391.)

July 6—We ship one car, 22 cattle, acc. Bowen. He could not get any good cattle, and he thought he would try a load of big cattle. (p. 399.)

Exhibit 11 (identified Record, p. 271) includes the following:

Aug. 15—Bowen only got one car here to-day. He thinks they want too much for Texas.

The detailed statement accompanying is headed: "Sold to W. P. Bowen & Co."

There are also two passages in this correspondence which show that complainants were aware that W. P. Bowen & Co. were not identical with F. J. Rappal, Sr.

August 13 they write (p. 420):

F. J. R., Sr., requested me to tell you that he collected $40 last week, rebate freight, and to charge him with it and cr. Bowen & Co.

September 5. (p. 438): F. J. R., Sr., collected of H. & St. Joe R. R. Co. $15 on 3 cars cattle shipped from Liberty some time ago; that belongs to Bowen & Phalan. Charge Rappal, Sr., and credit Bowen & Co. $7.50 and P. Phalan $7.50.

Thomas Gillespie, in his testimony, admitted having written these instructions or such as these. He was invited to explain the reason for them, but had nothing to offer more than what appears in the letters themselves. (p. 164.) There is no reason for them on the supposition that, as A. J. Gillespie pretends in his testimony, Rappal Sr. and W. P. Bowen & Co. were identical.

The loose and varying way in which complainants, both on their books and in their correspondence, designated the consignments on account of W. P. Bowen & Co., goes to show that they did not regard that firm as a fictitious name adopted to conceal Rappal's speculations; if they had, they would naturally have been careful to use it always in designating his ventures. On the contrary, their use now of "Bowen," now of "Bowen & Co." and now of "Bowen & Rappal," is just what might have been looked for in people who are not careful to use language precisely and who are speaking of an actual association in terms accurate enough to identify it.

Milton James, who was still in complainants' service when he gave his testimony (Record, p. 187), was called by them, and denied as absolutely as their hearts could have wished that there was ever any partnership of Bowen & Co. in which he was concerned. But he went on in the next breath to destroy the effect of this by saying that there were several transactions (he does not say how many) in which he was interested with Bowen and Rappal (Record, p. 187); that his interest was one-third "in whatever the cattle might make or lose" (Record, p. 188); and that he was thus interested with them in the three consignments which are now in controversy. (Record, p. 187.)

His denial of the existence of any partnership was doubtless owing to his having the not uncommon notion that there is no partnership where there are no formal articles.

It is therefore clear by the most unimpeachable testimony—that of a witness who testified with the expectation and intent of establishing the contrary—that the partnership of W. P. Bowen & Co. was actual and *bona fide*, and not the fiction which Gillespie pretends it was; and that Gillespie, in testifying that the elder Rappal told him he wished to use the name Bowen & Co. for the purpose of concealing from other commission merchants the fact that he was dealing in live stock on his own account (Record, pp. 177–8, 183), tells what is highly improbable; and Rappal, in denying that he made any such representation (Record, p. 249), is in harmony with the proved facts of the case.

It will be borne in mind that the only conflict of testimony between the complainants and the Rappals on the facts which we have been discussing relates to the question whether the cattle in question were bought by, and the profit or loss on them attached to, and the liability to Gillespies for their advances and services rested on, Frederick J. Rappal, Sr., in partnership with Bowen and James or on Frederick J. Rappal, Sr., alone. As we have shown, the Rappals are clearly telling the truth when they affirm the former; but even if the Gillespies were telling the truth when they affirm the latter, it would make no difference as to the practical issue. Whether the cattle were owned by Rappal, Bowen and James, or by Rappal alone, either way the alleged ownership of the complainants is equally excluded.

Having testified explicitly to the facts constituting ownership of the cattle in others, it is not at all material that the complainants go on to testify to a conclusion of law totally incompatible with those facts, for the purpose of making out an ownership in themselves. The original exercise of choice in acquisition, the determination whether to buy or not to buy, the liability for the price and to pay complainants for the use of their money and for their services about the cattle, the power of disposition, the right to the profits, and the liability for the losses, being all confessedly in Rappal or Rappal and his associates, and Gillespies having "no other interest in these "transactions than that of holding the cattle until their

"drafts for the amount they had paid out (including ex-"change) were paid to them, and their commission for "doing their business," (T. E. Gillespie's testimony, p. 157) it was necessary for the complainants in their testimony to bridge in some sort the chasm between these facts and the allegation of their bill that they themselves were the owners of the cattle in controversy.

Accordingly A. J. Gillespie testifies that it was part of the original agreement with the elder Rappal that "we "[Gillespies] were to hold the cattle as ours until the "drafts were paid." (Record, p. 176.)

Again, in response to the questions of his counsel, he says (p. 177):

Q. For what purpose were they [the cattle] turned over to Rappal, Sons & Co.? A. To be sold on commission.

Q. For whose account? A. If our drafts were paid, the cattle would be theirs. As soon as we got our money we had no further interest in them.

Q. And if the drafts were not paid? A. The property was ours. We would draw a draft for the amount of the indebtedness every night, and in case the drafts were not paid, the cattle belonged to us. * * * All the time they were really our cattle; we had control and possession of them.

It is evident on the face of it that all this is merely that view of the facts which has seemed to Mr. Gillespie and his counsel best adapted to support an attempt to make the appellant bank pay the debt which Bowen & Co. owed the Gillespies.

It is evident that, putting aside the form of words which the Gillespies are pleased to adopt, and the legal effect which they ascribe to their position, the gist of

their testimony really amounts to nothing more than that they had, or were to have, a lien upon the cattle for the repayment of their loan to the owners.

And this is all that the learned judge, who decided in their favor in the court below, was prepared to affirm. He says, in his opinion (Record, p. 26):

> I hold that the cattle belonged to the Gillespies, or that the Gillespies were entitled to control them so far as necessary to protect themselves for advancements made on the puchases.

The second member of the alternative is, as we have seen, the only one that derives any color at all from the testimony; and it is pretty clear that it is the only one which the learned Circuit Judge was prepared to affirm. And it is not at all what is alleged in the bill. The bill does not say, and those who drew and signed it did not intend to say, that Gillespies had a lien on the cattle or held them in pledge to secure advances. It says in the most unmistakable terms that the cattle were absolutely theirs; that they sent them to Rappal, Sons & Co. for sale on their own account; and that they were entitled to receive the net proceeds. No man of common sense, however unfamiliar with the technical phraseology of the law, could fail to perceive the contradiction between these allegations and the facts which are shown by the evidence and were well known to the Gillespies when they signed this bill.

2. The decree and the complainants' whole claim to relief being founded upon the allegations of their bill that they, as buyers and sellers of live-stock, were the owners of the cattle and entrusted them to Rappal, Sons & Co. to sell on commission for their account, and were entitled to the proceeds in Rappal, Sons & Co.'s hands after deducting the expenses and commissions; and those allegations being shown to be false, the decree and the complainants' claim to relief must fall.

No doctrine of equity is better settled than that a complainant who alleges one case in his bill cannot recover by proving a different one.

The principle is thus laid down by the text-writers:

"A decree must be founded on and in conformity with the allegations and proofs, and cannot be based upon a fact not put in issue by the pleadings."

1 Barbour's Chancery Pr., 339.

The rule has been repeatedly affirmed by this court in the most positive terms.

In *Harrison* v. *Nixon*, 9 Peters, 483, the decree was reversed on the ground that one of the facts on which it was necessarily based, the domicil of a testator, was not averred in the bill.

The Court say (p. 503):

The proofs must be according to the allegations of the parties; and if the proofs go to matters not within the allegations, the court cannot judicially act upon them as a ground for its decision; for the pleadings do not put them in contestation. The *allegata* and the *probata* must reciprocally meet and conform to each other.

In the case of *Carneal* v. *Banks*, 10 Wheaton, 181, Banks filed a bill against the Carneals to set aside a contract he had made with their ancestor for a purchase or exchange of land. The Circuit Court decreed the rescission of the contract on the ground that it described the land to be conveyed by Carneal as bordering on Green River, whereas in fact it did not touch the river. (p. 186.) On this the Supreme Court say, (pp. 188–9):

> The variance between the location of the land sold by Carneal to Banks and the description of it in the contract, is not averred in the bill, and is consequently not put in issue. The maxim that a decree must be sustained by the allegations of the parties as well as by the proofs in the cause, is too well established to be disregarded. * * * Did this court then concur with the Circuit Court in its construction of the contract between Banks and Carneal, the decree could not be affirmed, because the parties have not put that fact in issue.

In the case of *Crockett* v. *Lee*, 7 Wheaton, 522, each party demanded that the other should make a conveyance to him of certain land to which they respectively held conflicting titles. The Circuit Court decreed that Crockett should convey to Lee, being induced to this by evidence going to show that the location on which Crockett's title was founded was so vague as not to originate any right to the land in question. This was the principal matter to which the taking of evidence was directed, but the Supreme Court reversed the decree on the ground that this vagueness of location had not been put in issue by the pleadings. The Court say, (pp. 526–7):

> The counsel for the appellant says it would be monstrous if, after the parties had gone to trial on the validity of the entry, and have directed all their testimony in the

Circuit Court to that point, their rights should be made to depend in the appellate court on a mere defect in the pleadings which had entirely escaped their observation in the court where it might have been amended, and the nonexistence of which would not have varied the case.

The hardships of a particular case would not justify this tribunal in prostrating the fundamental rules of a court of chancery—rules which have been established for ages on the soundest and clearest principles of general utility. If the pleadings in the cause were to give no notice to the parties or to the court of the material facts on which the right asserted was to depend, no notice of the points to which the testimony was to be directed and to which it was to be limited, if a new case might be made out in proof, differing from that stated in the pleadings, all will perceive the confusion and uncertainty which would attend legal proceedinings, and the injustice which must frequently take place. The rule that the decree must conform to the allegations as well as to the proofs of the parties, is not only one which justice requires, but one which necessity imposes on courts. We cannot dispense with it in this case."

The case now before the court is no such case of hardship. The misstatements of the bill did not "escape ob- "servation in the court where it might have been "amended," and at the close of the whole case the decree was deliberately drafted to conform to them. The complainants cannot be permitted to bolster up the mandatory part of the decree by an entirely different allegation which they ingeniously contrive to infer from the evidence.

That this is not one of those cases where a suitor fails to apprehend the effect of the technical language employed by counsel in drawing a pleading, is apparent from the fact that previously to filing their bill, and on the 16th of October, 1885, the Gillespies had served a notice in

writing on the appellant bank, making exactly the same claim which they make in the bill. This notice is made an exhibit to their bill. In it they say (Record, p. 8):

> These cattle all belonged to us, and were consigned to Rappal, Sons & Co., as commission merchants, to be sold for our account.

If the object of the complainants had been to take the judgment of the court on the legal effect of the facts, the obvious way—so obvious that it seems impossible that anybody could have unintentionally missed it—would have been to state the facts as they were, and state also what the complainants claimed in view of them.

Any one who will carefully compare the bill with the evidence will find it difficult to avoid the conclusion that it was drawn for the purpose, not of disclosing the facts, but of constructing a case against the Union Stock Yards National Bank, and in the hope that by the connivance of the Rappals, the managers of the bank having of course no knowledge of their own of the actual relation between the Gillespies and the Rappals, a baseless claim might be supported by a show of evidence.

The plot was actually proposed by the elder Gillespie to the Rappals in an interview which he sought with them at Chicago, about the middle of October, after it had become apparent that the protested drafts could not be made good by anybody who was really liable, and on or just before the date of Gillespies' written notice to the appellant bank. Each of the Rappals circumstantially testifies that on that occasion A. J. Gillespie asked

them to pretend that the three consignments of cattle in controversy were his, in order that he might be able to get the money out of the appellant bank; in consideration of which he would forego the difference between the amount which the Gillespies had advanced to pay for those cattle (and which they were of course entitled to be reïmbursed by the elder Rappal, Bowen and James) and the considerably smaller net amount which the cattle had brought, which of course would be all the owners were entitled to, and which is what complainants demand in their bill. (Record, pp. 250, 272-3, 295.) There is some variation in the testimony as to the exact words which Gillespie used, but none whatever as to the substance of the proposition.

The interview took place in response to a telegraphed request from Gillespie (p. 273.) The respective counsel of Gillespie and the Rappals were present during parts of it, but Gillespie and the Rappals were alone together when this conversation took place. (pp. 251, 273, 294, bottom.)

The Rappals did not assent to the proposition (p. 295). But the elder Rappal testifies that he said nothing in answer (p. 251); and it does not appear what was said by either of his sons. It may well be, therefore, that complainants, when they filed their bill, were still not without hope that the Rappals would fall in with the scheme. It will be noticed that the Rappals were not originally made parties to the bill; that, even as amended, it asks no relief against them; and that they were originally called as witnesses for the complainants. (Record, pp. 52, 104.)

The elder Gillespie admits the interview, but denies that anything of the kind was proposed. (p. 184.) Ob-

viously he was under the necessity of denying it, or of confessing that his suit was a fraud. On the other hand, no sufficient motive—no motive at all, in fact—appears for the three Rappals to have concurred in inventing such a story and falsely testifying to it, each in detail. It is especially incredible that they should gratuitously have taken upon themselves the responsibility of putting forward such an invention when they knew (as they must have known) that Gillespie had already denied under oath what they were about to allege, he having been asked by their counsel, in cross-examination, whether such a conversation did not occur. Gillespie's testimony was given on or before the 16th of October, 1886, as appears by the date of the Examiner's certificate. (Record, p. 189.) The elder Rappal testified on the 1st of December (Record, p. 246), and his sons still later (pp. 266, 291).

The previous reputation of the Rappals is such as to forbid imputing to them the concoction of a malicious and gratuitous falsehood. It is positively in evidence that the elder Rappal had for some fifteen years at least borne an unblemished character, so that his credit was good even when he was not supposed to have any property. (Record, pp. 84, 213.) And there is nothing whatever to discredit either of the sons, who had been doing business at the Union Stock Yards for some four years without reproach. (Record, p. 212.)

V.

Even if the bill had alleged, in the words of the learned Circuit Judge, that "the Gillespies were entitled to "control the cattle so far as necessary to protect themselves for advancements made on the purchases," the evidence would not support it.

The learned judge bases his opinion on this point upon a supposed "contract with the senior Rappal that Gillespie & Co. should ship the cattle as their own and have "control of them until sold at Chicago, and paid for." To this, he says, "two of the Gillespies swore," and "in this they were fully corroborated by the witness James." (Record, p. 26.)

It is true that two of the Gillespies swore to something like that; but one of them, Thomas, also virtually swore that all he knew of any such stipulation was what his father had told him—and told him, for aught that appears, after the present controversy had arisen. After saying that his knowledge of the arrangement which Rappal made with the Gillespies came partly through Mr. Rappal and partly from his father (Record, p. 162), and, being asked to state everything that he had learned directly from Rappal, he repeated all the conversations he had had with Rappal on the subject (Record, pp. 162–4); and in none of them was there any recognition or suggestion of any right of the Gillespies to ship the cattle as their own or hold them as their own, or control them at all. It is evident that this pretension is really supported

by the testimony of only one Gillespie, upon which grave suspicion is thrown by the utter absence of the idea from Rappal's repeated conversations with the other.

The corroboration by the witness James is of the same sort. Being an employee (Record, p. 187, bottom), of the Gillespies, and naturally interested in having them get all they could out of the appellant bank and thereby have the less to claim from him, he readily fell in with the view which seemed most favorable to that result. After saying that he had an interest in each of the consignments in controversy, he is asked (p. 187):

"Who had possession and control of those cattle, from the time that A. J. Gillespie & Co. paid for them until they were sold in Chicago? Ans. A. J. Gillespie & Co. *should* have charge of them, *I should think*."

This evidently does not state any provision of a contract of which the witness had definite knowledge, but merely a rather uncertain inference on a question which had but recently been suggested to him. Naturally complainants' counsel desired something a little better than this. So he repeated the question in words slightly different:

"Q. With relation to doing the business, what was the understanding with you and your co-owners as to A. J. Gillespie & Co. having control of the cattle until their drafts were paid? A. They were to pay for them; and when paid for, the cattle were under their control until the drafts were paid."

This is obviously the same conjecture more confidently stated. The witness does not say or intimate that he took part in or was present at the making of the original contract; nor does he say or intimate that Rappal told him of any such stipulation. The inference from Rappal's testimony is that James was not present when the con-

tract was made (Record, p. 247). And Gillespie says expressly (Record, p. 178):

"Neither James nor Bowen had anything to do with the business, so far as we were concerned."

It is clear, from every point of view, that James had no knowledge of any such contract as Gillespie alleges. Apart from A. J. Gillespie's own testimony, the evidence of any such contract is all surmise and inference.

The learned judge goes on to say (p. 26):

"The senior Rappal swore *that such was not the arrangement;* that the agreement was, that the Gillespies should furnish the money for the purchase of the cattle, which they did, and ship them *as the property of Bowen & Co.*, and that the Gillespies should receive a specific amount per car for their advancements and trouble."

He might also have said, with perfect accuracy, that, except the words which we have italicized, this is also the testimony of the Gillespies (Record, pp. 183, 163). It may be noted also that Rappal does not allege any express contract that the Gillespies' were to ship the cattle "as "the property of Bowen & Co." What he says is, that the idea of their being anybody else's property, or regarded as anybody else's property, was never suggested. (Record, pp. 248–9.) As we have seen, the learned judge is mistaken in supposing that Rappal is contradicted by any competent testimony except that of the elder Gillespie.

The Opinion goes on to say (Record, p. 26):

True, Rappal's two sons swore that the contract was as their father testified; but they admitted that all they knew of the agreement was what their father had told them.

This is a misapprehension. There is no such admission in their testimony. It is true that their knowledge of what was said on the one side and the other when the agreement was first made with A. J. Gillespie was derived from what their father told them; and they do not assume to swear at all as to what was then and there agreed on, but only as to what their father reported about it. But it will be borne in mind that during the time that this agreement was in force, these two sons had the entire management of the business of Rappal, Sons & Co., (Record, p. 268); that all this time they were transacting business with A. J. Gillespie & Co., for account of Bowen & Co., in pursuance of this agreement, constantly receiving consignments and drafts and conducting a voluminous correspondence with complainants; and all this time they never knew of any right or claim of complainants to any property in or control of the cattle, but on the contrary always knew the cattle they were receiving as W. P. Bowen & Co.'s only. The total absence of any such right or claim on the part of the Gillespies is implied in the whole testimony of the younger Rappals. The idea is entirely foreign to their understanding of the transactions.

Thus Frederick J. Rappal, Jr., says (Record, p. 53):

All I know is, those cattle were shipped by Bowen & Co.

In relating the interview of the Rappals with the elder Gillespie at Chicago after the protesting of the drafts in question, this witness says (Record, p. 273):

Mr. Gillespie says: "Now, boys, what can we do?" We said nothing, because we didn't know any reason why we should do anything, as we had nothing to do with A. J. Gillespie.

The meaning evidently is that Rappal, Sons & Co., particularly the two younger members of that partnership, and consequently the partnership as a whole, had incurred no obligation or responsibility to Gillespie & Co., their relation being essentially with W. P. Bowen & Co., alone (who were still in debt to them), and with Gillespies merely as agents of W. P. Bowen & Co.

In the cross examination of this witness by complainants' counsel, the following occurs (Record, p. 285):

Q. You said [that] on Monday morning, October 5, 1885, you told Mr. Conrad [the cashier of the appellant bank] that the draft for 19,000 and odd dollars was coming in against you. How did you know it? A. We always got letters from W. P. Bowen& Co., that is * * * A. J. Gillespie & Co. were always directed by W. P. Bowen & Co. to send letters to us and let us know what was coming.

* * * Q. How did you know that such a draft was coming in against you? A. By the letter; but who drew that draft I didn't know until I saw the draft. *All I knew was* that Bowen & Co. owed us this money, and *these cattle came in as Bowen & Co.'s cattle, and were sold as Bowen & Co.'s cattle, and Bowen & Co. got credit.*

(p. 288.) We made up our minds that if Bowen & Co. wouldn't put up any margins or settle their account, that we would have to hold their cattle for it—Bowen & Co.'s cattle.

* * * (p. 289.) Q. You paid no attention to A. J. Gillespie & Co. in this matter at all, did you? A. Nothing.

Q. You didn't consider that you came into possession of these cattle through A. J. Gillespie & Co's. order, did you? A. No.

Q. But in point of fact you did come into possession of these cattle through A. J. Gillespie & Co.'s order, didn't you? * * * A. Yes, sir—account of Bowen & Co.

Q. Is there any "Bowen & Co." in these orders? A. Certainly not, but that is on the bill that they sent to us.

* * * (p. 290.) Q. When did you make up

your mind to do that? A. As I told you before—after we couldn't hear anything from the parties shipping right along, Bowen & Co.

Lawrence L. Rappal testifies (Record, p. 292):

Q. Did you know that A. J. Gillespie & Co. had any other interest in these cattle than that stated by you as being in the arrangement made by Bowen & Co. with Gillespie & Co? A. No, I did not.

Q. That their interest was simply that of forwarder? A. Forwarder.

Q. For Bowen & Co? A. Yes, sir.

(p. 300.) I knew the cattle as W. P. Bowen's cattle.

In the transaction of all that business, in all that correspondence, if the Gillespies had exercised or claimed any ownership or control or possession of the cattle in transit, would not the younger Rappals have got some inkling of it? Is not the manifest fact that they never did get any such idea, strong evidence that there was no such idea in the arrangement? Their evidence on this point is thus seen to be much more than what they were told by their father.

Moreover, there is in evidence a large mass of the letters and statements sent by the Gillespies to Rappal, Sons & Co., extending over nearly the whole time of the transactions on account of Bowen & Co. (Exhibits 9–17, pp. 358–456.) Is it not reasonable to expect that in all this correspondence there would be some claim or mention of the right of possession or control alleged to be in the Gillespies, if any such right existed? But the correspondence will be searched in vain for the slightest intimation of any such right or claim.

More than all this, the way in which the business was done makes it clear that the Gillespies had no possession of the cattle while in transit, and never exercised or attempted to exercise, and never could have exercised, any ownership or control over them. A large proportion of these cattle, when bought by Bowen & Co. at Kansas City, had come there already consigned to Chicago, although the consignees were Kansas City commission merchants; it being a common practice in sending cattle to the Kansas City market to take through bills of lading to Chicago, in view of the probability that, after being sold at Kansas City, they would be sent on to Chicago, and of the saving in freight that would be made by billing them through in the first instance, from what it would cost to bill them to Kansas City, and then *de novo* from Kansas City to Chicago. If, after they had reached Kansas City, it should be determined not to send them any farther, freight to Kansas City would be all that the consignees would have to pay. As cattle in transit are necessarily delayed a considerable time at Kansas City, there is always opportunity, after they arrive there, to ascertain whether it is desirable to send them on or not. When cattle thus consigned were bought by Bowen & Co. (whether the work of selecting and negotiating were done by Rappal, Bowen or James), the bills of lading were not changed, and the cattle went on to Chicago, consigned to the same Kansas City commission house as at first, whether A. J. Snider & Co., Quinlan, Montgomery & Co., or some other. (Record, pp. 276–7). It is to this mode of shipment that A. J. Gillespie refers when he testifies: "We "bought some cattle which were billed through on rates; "to protect them all, we had to let them go through as "they were billed." (Record, p. 177.) So Thomas E.

Gillespie says of the first of the three consignments in controversy: "They were shipped to Chicago on a rate bill, "to Snider & Co., to be turned over to Rappal, Sons & "Co. for sale." (p. 141.) The three particular consignments now in controversy were forwarded in this way, as a good many others had been.

So far then as the bills of lading were concerned, the possession and control were in the original consignees, and not at all in A. J. Gillespie & Co. These consignees, however, on receiving the price of the cattle from A. J. Gillespie & Co. gave them an order on the Stock Yards Co. at Chicago for the delivery to them of the cattle. This did vest the possession and control in A. J. Gillespie & Co. But as soon as they received the order they, in accordance with the agreement with W. P. Bowen & Co. under which they received it, endorsed it over to Rappal, Sons & Co., and forwarded it immediately to them, usually by mail, sometimes by the drover designated as "shipper", who went on in charge of the cattle. (Record, pp. 276–77, 360—Document No. 641.)

The orders for the three consignments in question will be found copied (with some obvious clerical errors) on pp. 70 and 73 of the Record. As to a part of the second consignment, however, sixteen car-loads, the bill of lading did not run to the Kansas City commission house which made the sale, but to an earlier holder, the Hanford Cattle Co., and the order for delivery to complainants, endorsed over by complainants to Rappal, Sons & Co., came from that earlier holder. Thomas Gillespie and the elder Rappal both testify that these cattle were bought from A. J. Snider & Co. (Record, pp. 142, 258.) The sale ticket shows that the sale to Bowen & Co. was made by A. J. Snider & Co. for

account of the Hanford Cattle Co. ("H. C. Co.",—by a clerical mistake in the record "H. C. & Co.") (Record, p. 457); and the order for the delivery is dated at Snider & Co.'s office, but it is signed by the Hanford Cattle Co., and states that the consignment is to that company. (Record, p. 70.)

The complainants thus divested themselves of the possession and control of the cattle just as soon as they received it; and that possession and control passed to Rappal, Sons & Co., their right being made apparent on presentation of the order at the Union Stock Yards at Chicago. If by any accident the order should be lost, the apparent possession and control would evidently be still in the house from which the cattle had originally been purchased, and to which they were consigned by the bill of lading. On the order itself the Gillespies appear not as consignors, but mere intermediaries, having no apparent interest superior to that of Rappal, Sons & Co.

When, on the other hand, the cattle which were bought had not already been billed through to Chicago, they were consigned from Kansas City to Rappal, Sons & Co., the consignment usually purporting to come from A. J. Gillespie & Co. for account of W. P. Bowen & Co. (Record, p. 277.) In these cases, therefore, the possession and control while in transit were evidently in Rappal, Sons & Co., and in nobody else; and the bills of lading showed that not the Gillespies but W. P. Bowen & Co. were the real party interested as consignors.

All the consignments of cattle under the arrangement or contract in question were made in one or the other of these two ways, the three consignments now particularly

in controversy being (as we have seen) all made in the former way. And whichever way they came, it is evident that the Gillespies never made any attempt to keep them in their own possession or under their own control. This fact completes the demonstration of the absurdity of A. J. Gillespie's pretended stipulation in the original agreement with the elder Rappal, that the Gillespies were to hold the cattle as theirs until their drafts should be paid. Even without the direct contradiction by Rappal and his two sons, the uniform conduct of the Gillespies themselves shows that this stipulation was invented after the present controversy arose, to make an excuse for claiming from the appellant bank the money for which the cattle had been sold.

For the opinion of the learned Circuit Judge that "the "cattle belonged to the Gillespies, or that the Gillespies "were entitled to control them so far as necessary to pro- "tect themselves for advancements made on the pur- "chases" (Rec., p. 26), there is just this modicum of foundation. W. P. Bowen & Co. (including, of course, the elder Rappal) were bound to repay the Gillespies the money which they had advanced to pay for the cattle; and Gillespies might, if they had chosen, have insisted in each case that, as a condition of their advancing the money, they should have a lien for it on the cattle, and might have made the lien actual in the familiar and regular way, by attaching the bill of lading or the order, as the case might be, to their draft and instructing the collecting bank not to give up the former except on pay-

ment of the latter. All this might have been, but none of it ever was. And it is not at all certain but that if they had proposed such a condition, it would have prevented their making any arrangement with Bowen & Co. As Mr. Washburn testifies (Record, p. 230), the practice of thus attaching the bill of lading or order to the draft, though not altogether unknown, is by no means common in the business of the Stock Yards. Probably this is because such a practice may often occasion unnecessary delay in the sale of the cattle covered by such bill or order, and so very considerably increase the expenses which must come out of the consignor's receipts, and thus the losses arising from it may more than counterbalance any that are likely to come from the want of the protection which it would afford.

The learned Judge says: "It is hard to believe that "Gillespie & Co. would furnish such large sums of money "without any security." But it is the admitted fact that they did so, without taking any security that was actual; nor would there have been anything imprudent or extraordinary in their doing so, if they had performed diligently the duty which they undertook of keeping accounts for W. P. Bowen & Co., and had seen to it that the proceeds of the cattle were not falling materially short of the sums which were being paid for them. The elder Rappal depended entirely on them for this service, being himself entirely unversed in book-keeping (Record, pp. 108, 110, 247, 259, 268). They had the means of rendering it in the accounts of sales, which they regularly received from Rappal, Sons & Co. (Record, pp. 145, 56–7), and if they had taken and given seasonable warning, there is no reason to suppose they would have lost anything.

But while the elder Rappal and his associates at Kansas City were eagerly competing with the other buyers in that market, the complainants appear to have thought principally of the commissions that were rolling up for them on the liberal purchases; and either did not stop to balance the gains against the losses as they went on; or else thinking the resources of the members of the firm of W. P. Bowen & Co. were greater than they really were, neglected to give any warning, though they knew that the ventures were becoming on the whole highly unprofitable.

The elder Rappal had been known to the senior of the Gillespies for many years (Record, p. 176), was known to have some property, and had always maintained good credit (p. 104), which would not have been impaired in this instance, had he not put too much dependence on the complainants. And although the Gillespies in their testimony have studied to depreciate Bowen and James, yet Bowen was known to have a farm of considerable value, and although that farm was mortgaged, it does not appear that the Gillespies knew that until after the dishonoring of their drafts, or if they did know it, that they considered it no security beyond the amount of the mortgage (Record, pp. 298–9, 253, 146, Exh. 22, p. 469). Bowen had been for some time a seller of cattle on his own account, while James was buying and selling on his own account quite extensively during the time of the transactions in question and must have had at least that degree of credit which ordinarily attaches to a manifest ability to conduct a considerable business for a considerable time in the regular way and is, in the absence of capital, the

indispensable foundation of that ability. Nor was there anything in complainants' advances beyond a fair business risk, except for their own neglect to take seasonable notice of the extent to which they were allowing the risk to increase.

Consignments for James' individual account, such as we have referred to, are mentioned in Gillespies' letters of April 25 (Rec., p. 363), April 29 (p. 364), May 2 and 4 (p. 365), May 8 and 11 (p. 368), May 12 and 15 (p. 369), May 13 (p. 370), May 20 and 22 (372), June 24 (p. 390) June 29 (p. 394), July 11 (p. 402) and July 15 (p. 405).

VI.

There is nowhere any allegation that the operations of W. P. Bowen & Co. were those of Rappal, Sons & Co., or that the elder Rappal, even by the slightest implication, assumed to be acting on behalf of his sons or to engage their responsibility, or that of the firm, in those operations. It is true that the elder Gillespie testifies (Record, pp. 177–8), that "Mr. Rappal said he didn't want the commission men to know he was shipping cattle; that he had a man by the name of Bowen with him, and he wanted the cattle handled in that way to keep it separate, and to keep people from knowing that Rappal, Sons & Co. were shipping cattle." But Rappal denies (p. 249) having said anything of the sort, and nothing appears in

the history of the actual transactions, to corroborate Gillespie's story. But even if we supposed that story to be substantially true, it would still remain very doubtful whether the firm of Rappal, Sons & Co. were spoken of as shipping cattle. Even a truthful witness might easily have told the story as Gillespie has done, if Rappal had said that it might impair confidence in the fidelity of the commission firm of Rappal, Sons & Co. to have it known that one of its members was dealing in cattle on his own account. Moreover, the elder Gillespie is not so studious of accuracy in his assertions as to justify attaching much importance to any uncorroborated allegation of his. For example, referring to the cattle which, as we have seen, were never in complainants' possession or control from the moment they left Kansas City, he says: "They were always in our possession; * * * all the time they were really our cattle; we had control and possession of them." (Record, p. 177.)

Thomas Gillespie, who on this point testifies only to what his father told him (pp. 162 & 163), says that Rappal said he did not want any of the other commission merchants to know that *he* was in the shipping business. (p. 154.) It would seem then that the elder Gillespie in reporting the conversation to his son, made no mention of Rappal, Sons & Co. And the elder Gillespie himself, immediately after making the allegation in question, testifies as follows in answer to the questions of his own counsel (Record, p. 178):

"Q. What do you know about any one being interested in the transaction, excepting F. J. Rappal, Sr.? A. I don't know whose the interest was; our business was at his orders—Mr. Rappal's orders—to ship the cattle to Rappal, Sons & Co.?

—a plain confession that he understood Rappal to be speaking for himself alone. Being desired in cross-examination to give the words used by Rappal as correctly as possible, he says (p. 183):

"He said he didn't want the commission houses in Chicago to know that *he* was speculating, and that he wanted to do it through Bowen, a man who was working for him."

Here being particularly asked to give the words as exactly as possible, he does not name Rappal, Sons & Co. at all.

This disposes of the only particle of evidence that can justify or excuse even a suspicion that Rappal professed, or Gillespies understood him, to be making a contract on behalf of Rappal, Sons & Co.

It is farther worth noticing, however, that Thomas E. Gillespie testifies as follows in answer to the question of his counsel, (Record, p. 154):

Q. So far as you know did any one other than F. J. Rappal, Sr., have any interest in that shipping business? A. Not so far as we were concerned. I didn't know of any.

And the elder Gillespie himself says: (p. 178) that Rappal's directions were "to keep the account 'Account of Bowen & Co.,' but it was *his* account."

Perhaps we ought to mention in this connection the note and draft, each signed "Rappal, Sons & Co." which the elder Rappal gave to A. J. Gillespie after one of the drafts in controversy had been protested.

Rappal himself says that his intention was to give these on behalf of W. P. Bowen & Co., and that the signing of the other firm was a blunder due to his almost total want of practice in everything relating to accounts and papers. (Record, pp. 107–8, 110–11.) In saying, "The reason I wrote Rappal, Sons & Co.—I am no hand at writing," he does not mean, of course, that mere inexpertness in penmanship led him to write the one name instead of the other; but that in the confusion naturally incident to the unaccustomed operation of drawing up a note and a draft, he thoughtlessly signed the name of a firm which he had been accustomed to use instead of one which he had very possibly never signed at all before, the latter firm itself having been in existence hardly six months. The persistent cross-examination by complainants' counsel, on pp. 255–262, brings out clearly the elder Rappal's habitual neglect and almost total ignorance of all financial formalities. Having when at home depended upon his sons, associates or employees for that part of the business, and having at Kansas City placed a like dependence upon the Gillespies, and being now called upon to draw up a note and a draft without help, or—what is perhaps more likely—being favored with suggestions from Gillespie, it is not at all improbable that he should have blundered just as he says he did. Indeed a draft by Rappal, Sons & Co. on Rappal, Sons & Co., would, at any rate under the existing circumstances, have been an absurdity.

It may be noted that the memorandum of protest on this draft indicates, what would be a practically certain in-

ference from the ordinary course of the mails, that it did not reach the Union Stock Yards till October 7, after the transactions between the Rappals and the bank which complainants seek to annul, had been consummated. (Rec. p. 469)

That the firm of Rappal, Sons & Co. and the two younger members of it had assumed no liability for the operations of W. P. Bowen & Co., is expressly testified by every member of the former firm.

The elder Rappal, after explaining that all his agreements with the Gillespies were on behalf of W. P. Bowen & Co., and that the arrangement was that W. P. Bowen & Co. should buy the cattle and be indebted to Gillespies for the money advanced by the latter to pay for them (Record, pp. 107 bottom, 111, 246, 247, 249, 250), testifies as follows (Record, p. 249):

Q. Did you ever tell him [A. J. Gillespie] that Bowen & Co. meant Rappal, Sons & Co., or words to that effect? A. No, sir.

(P. 250.) Q. Did you ever at any time tell A. J. Gillespie & Co. that you were buying these cattle for Rappal, Sons & Co.? A. No, sir.

Frederick J. Rappal, Jr., testifies that he knows of no agreement by Rappal, Sons & Co., or any member of that firm, with Gillespies, to pay Gillespie's drafts for the proceeds of the Bowen & Co. cattle (Record, p. 267); that he was in no way interested in the firm of W. P. Bowen & Co., and that he never heard or thought of any arrangement by Rappal, Sons & Co. with Gillespies, or among themselves, by which they should do business under the name of W. P. Bowen & Co. (p. 268.)

Louis L. Rappal, the remaining member of the firm, says that he never heard of any such arrangement, and

would not have tolerated it for a minute. (Record, p. 293.)

And he further testifies (p. 295) as follows:

Q. Was there any difference in the way in which you received these cattle which you say came on account of Bowen & Co., and the other cattle which you handled in your business as commission men? A. No, sir; no different those than thousands of other cattle that came as commission cattle and were sold as such.

Q. Then they came to Rappal, Sons & Co., to be sold on commission? A. Yes, sir.

Q. Did you have any interest in the profits or losses? A. None whatever.

Q. And you were not speculating in those cattle? A. No, sir; our business is commission solely.

The matter is simple enough. Rappal's personal credit was good, and the idea of fortifying it by that of his sons never occurred to him or to any of those with whom he was dealing.

It is worthy of notice that the Gillespies were in the habit of rendering to other customers exactly the same services as those which they undertook for Bowen & Co. Relating his conversation with the elder Rappal about the original agreement, Thomas Gillespie says (Record, p. 163):

"He said we were to buy the cattle and make out a statement and send it to the boys, and send the draft and ship the cattle *the same as we were doing for other parties.*"

The correspondence, from which we have already cited extracts, shows that during the greater part of the time covered by the transactions on account of Bowen & Co., consignments were constantly made in the same way

to Rappal, Sons & Co. on several different accounts in which there is no pretense that the Rappals, or any of them, had any interest whatever. We have already seen (*ante* p. 82 of this Argument), that a great number of such consignments were made on account of James individually; and the names of several other owners appear in the correspondence. The Gillespies drew on Rappal, Sons & Co. for the cost of these consignments exactly as they did for the consignments of Bowen & Co.; and not only so, but they made a common practice of blending in one draft the cost of cattle consigned on these other accounts with the cost of those consigned on the Bowen account. A few citations from the correspondence will suffice to illustrate this practice. Thus, a letter of Gillespie & Co., of May 26 (Record, p. 374), announces a draft of $15,000 that day, and one of $3,000 more to be made the day following; whereas the accompanying statement shows the cost of the 163 head of cattle consigned on account of Bowen & Co., to have been only $9,188. The first draft must, accordingly, have blended the cost of these cattle with that of seven other car-loads mentioned in the same letter as forwarded on other accounts, five cars being mentioned as on account of James. Similarly a letter of June 2 (p. 376), in connection with the pencil memorandum on it, shows consignments of 7 car-loads on account of Bowen & Co., costing $8,156, and two car-loads on account of Phalan, costing $2,093, with one draft on account of both consignments, for $10,000, a few dollars less than the aggregate cost of the two.

The last instance of this kind appears in Gillespie's letter of July 30. (Record, p. 414.) It is agreed on all hands, however, that the relations of the Gillespies with Bowen & Co. and Rappal, Sons

& Co. continued throughout as they were fixed in the original agreement of April, 1885, the only change made at any time being a reduction of Gillespies' charge for commissions and interest. (Record, pp. 251, 156, bottom.) Hence the obligations of Rappal, Sons & Co. were no greater and no other after Gillespies commenced making separate drafts for the cost of the cattle consigned on account of W. P. Bowen & Co. than they had been before. There is no pretense, and it would be unreasonable to suppose, that Rappal, Sons & Co. undertook or were understood to guarantee the payment of drafts on all those accounts in which none of the Rappals had any interest, without regard to the state of those accounts. And the presumption is strong that the Gillespies would not in their drafts have confounded those accounts with that of Bowen & Co. if the liability of Rappal, Sons & Co. had been any greater or other on that than on them. There is no intimation anywhere in the whole correspondence that that account stood on a footing at all different from the others. The elder Gillespie implies the same thing in his testimony where he says, in substance (Record, p. 186):

> We were shipping different lots of cattle to Rappal, Sons & Co., and they had to keep them separate up there by some designation, and we kept it "Bowen & Co.," and I suppose they kept it there in the same way. It enabled us to keep our Bowen account correctly, the same as we kept other accounts separate. It is a common way of doing business; we kept every man's account with somebody.

In the absence of express evidence one way or the other, the presumption would be that the transactions of Frederick J. Rappal, Senior, in making speculative purchases of cattle at Kansas City and borrowing money of the complainants and appellees for that purpose, even if Bowen and James were not concerned with him in these transactions, were not the transactions of the partnership of Rappal, Sons & Co., who were engaged solely in the selling of cattle on commission at the Union Stock Yards. (Record, pp. 112, 295, 140.) Parsons says:

"A lender of money to a partner cannot in general recover of the firm without showing that the money was applied to the use of the firm. For the presumption would be that it was borrowed by the partner on his own account, and not lent to the firm."

1 Parsons on Contracts, * 181.

And again (p. *184):

"The act of each partner is considered as the act of the whole partnership, or of all the partners, only so far as that act was within the scope of the business of the firm."

But even if the presumption were the other way, the evidence in the present case is express and uncontradicted that the money was borrowed by Rappal on his own account, either solely or jointly with Bowen and James, and that it was applied, not to any purpose of the commission firm of Rappal, Sons & Co., but to the speculative purchase of cattle for the account of W. P. Bowen & Co., that is to say for the partnership account of the elder Rappal, Bowen & James, as we think we have already shown—for the account of the elder Rappal solely, as the Gillespies pretend—but at any rate not for the account of Rappal, Sons & Co., as all agree.

It is obvious that such speculative purchases were not within the scope of the business of a factor, which was the sole business of the partnership of Rappal, Sons & Co.

VII.

In the partnership of Rappal, Sons & Co. each of the two young men stood on an equal footing with their father. So all three expressly testify (Record, pp. 265, 272, 296). Each of these young men owned and had contributed a third of the $9,000 capital, the contribution having been made more than a year before the origin of the transactions now in question. (Record, pp. 272, 279.) During the whole time of these transactions they managed the business of that partnership, and had done so for a large part of the time previously to that. (Record, p. 268.) The business of the partnership was the sale of live-stock on commission, and nothing else. (Record, p. 295).

From these facts it is evident that the distinction between this partnership and that of W. P. Bowen & Co., whose business was making speculative ventures on cattle, and in which neither of the two sons had any interest, (Record, pp. 110, 293, 296, 268) was substantial and manifest, notwithstanding the membership of the elder Rappal in both firms.

It was, therefore, the right and duty of the partnership of Rappal, Sons & Co., in the interest of its legitimate creditors, to enforce its factor's lien against W. P. Bowen & Co., exactly as it would have done against any other debtor.

The adjustment and enforcement of claims between partnerships having one or more common members, is a well recognized subject of equity jurisdiction. Thus Judge STORY says (1 Story's Equity Jur., § 680):

* * * "In equity, all contracts and dealings between such firms, of a moral and legal nature, are deemed obligatory, though void at law. Courts of equity, in all such cases, look behind the form of the transactions to their substance, and treat the different firms, for the purposes of substantial justice, exactly as if they were composed of strangers, or were in fact corporate companies."

In *Haven* v. *Wakefield*, 39 Illinois, 509, a suit in chancery, virtually by one firm against another, to recover rent under a lease, Haven being a member of both firms, was sustained. The court say (p. 518):

"This being a contract entered into between two partnerships, and Haven being a partner in each, no action at law could be maintained by one firm against the other. A person being unable to sue himself in any court, if one of these firms were to sue the other, such would be the result. * * * In such cases, however, to prevent a failure of justice, equity takes jurisdiction and makes compensation for any injury that may have been sustained."

In *Bolton* v. *Puller*, 1 Bosanquet & Puller, 539, Forbes and Gregory were partners trading in London and were also partners with Caldwell and Smith as bankers in Liverpool. Bolton had accepted bills payable at the London house, and he deposited bills payable to himself with the Liverpool house, which undertook to see that his acceptances were paid at London. The Liverpool house turned over to the London house the bills deposited by Bolton, there being an open account between the two houses, in which the Liverpool house was largely the debtor. The Liverpool house was also indebted to Bolton. In this state of things both houses went into bankruptcy the same day, the London house holding the bills which Bolton had deposited, and failing to take care of his acceptances; so that he had to pay them himself. The assignees in bankruptcy of the London house refusing to return the deposited bills, Bolton sued them in trover, and the Common Bench unanimously gave judgment for the defendants, on the ground that there had been a legitimate transfer of the property in the bills from the Liverpool to the London house. In giving the opinion of the court, EYRE, C. J., says, (p. 546):

"There can be no doubt that as between themselves, a partnership may have transactions with an individual partner or with two or more of the partners having their separate estate engaged in some joint concern in which the general partnership is not interested; and that they may by their acts convert the joint property of the general partnership into the separate property of an individual partner, or into the joint property of two or more partners, or *e converso*. And their transactions in this respect will, generally speaking, bind third persons, and third persons may take advantage of them, in the same manner as if the partnership were transacting business with strangers. For instance, suppose the general partnership to have sold a bale of goods to the particular

partnership, a creditor of the particular partnership might take those goods in execution for the separate debt of that particular partnership. In some respects therefore an individual partner, or a particular partnership consisting of two or more of those persons who are partners in some larger partnership, may he considered as third persons in transactions in which the general partnership may happen to be engaged with their correspondent. On the other hand, it will be difficult if not impossible for individual partners, or for particular partnerships, composed of individual partners, to shake off privity in all the transactions of the general partnership, or to avoid all the consequences of privity. Each partner is a party, as well as privy, to the transactions of the general partnership, though the general partnership is not a party to the separate transactions of the individual partners. * * *

(Page 550.) If then Forbes and Gregory were parties capable of acquiring a property in these bills, as capable as any third party, and did acquire it without reproach, and in truth in pursuance of that agreement upon which they were delivered to the banking-house,—why are not Forbes and Gregory to be considered as third persons with whom these bills have been negotiated?"

The principles here laid down are exactly applicable to the relation between Rappal, Sons & Co., and W. P. Bowen & Co. But our case is a much stronger one for the application of the principle than that of Bolton v. Puller, each partnership of Rappal, Sons & Co. and W. P. Bowen & Co., including members who had nothing to do with the other partnership and each being, therefore, with respect to the other, "a general partnership not a party to the separate transactions [in conjunction with strangers] of the individual "partners." And if Forbes and Gregory were entitled to put Bolton's bills to the account of the Liverpool house, of which both were members, and to include them among their own separate assets, much more are F. J. Rappal and his Chicago partners entitled to put the proceeds of the cattle sent by F. J. Rappal and his Kansas City

partners to the account of the Kansas City house, and to include those proceeds among their own separate assets.

The same principle was applied by the Supreme Court of Louisiana to the liquidation of the partnership of J. Brandt & Co., in the case of *Ward* v. *Brandt*, 11 Martin, 331. The court say (p. 429):

It is contended that, as assignee of the partnership in Kentucky, of E. P. Johnson & Co. and Ward & Johnson, the appellant has a right to prove and be paid the debt contracted with those houses, although some of their members were also partners in the house of J. Brandt & Co., and in this position we concur. It has been already decided that the private debt of one partner cannot be set off against that due the partnership. 1 Martin 25, 4 *ibid* 378. Yet this is what is attempted to be done here. The firm of Brandt & Co. owes E. P. Johnson & Co., and they resist payment, because some of the partners of the latter owe the former, or rather are responsible for their debts.

In this case the relation of Brandt & Co. to E. P. Johnson & Co. and Ward & Johnson was exactly the same, so far as concerns the point now under discussion, as that of W. P. Bowen & Co. to Rappal, Sons & Co.

In the bankruptcy case of *Buckhouse & Gough ex parte C. L. Flynn*, 10 Nat. Bankruptcy Register, 206, Flynn was partner with Gough in another firm and was allowed to prove a debt in favor of Gough and Flynn against Buckhouse & Gough. Flynn was solvent, but the recognition of one firm as a creditor of the other does not rest on this ground. Judge Lowell says: (p. 206.)

It has for a long time been the law of England that proof could be made by one firm against the other in such

a case. The firms are regarded as distinct legal entities capable of contracting with each other in equity. The English cases have gone beyond this, and have admitted contribution between the joint and separate estates whenever there has been a distinct trade carried on and the contract or dealing has been between "trade and trade," as they say, though the partners may have been the same in both firms, or though one firm may have included the other. The Massachusetts courts have refused to follow these last decisions or to permit any proof between a firm and its members; but *no court has denied the right of proof when the two firms had one or more distinct partners.* In such a case a debt would exist, which to be sure could not be recovered at law for a technical reason. But I apprehend the better opinion to be that such a debt can be recovered in equity without going into a general settlement of the accounts of both firms. * * * Whether there be a remedy in equity or not, while the firms remain solvent, it seems clear that *there is a debt which equity can recognize*, and which in bankruptcy ought to be entitled to its share of dividends *in justice to the creditors of the creditor firm.*

There being a debt of W. P. Bowen & Co. to Rappal Sons & Co., "which equity can recognize," a court of equity will equally recognize the previous enforcement of that debt by Rappal, Sons & Co. through the ordinary and legitimate means of a factor's lien, "in justice to the creditors of the creditor firm."

VIII.

Even if Rappal, Sons & Co. had been under obligation to pay over to Bowen & Co., or to the complainants, a part of the proceeds of the sales of the cattle in controversy—nobody pretends that they ought to have paid the whole, part having to go for freight and yard charges and part for their commissions—even if they had been under obligation to pay over a part, yet when the money was reduced to their possession and blended with their other money, that obligation became an ordinary debt, having no more connection with that money than any other equally valid debt had. And the use of that money to pay such other equally valid debt was perfectly legitimate and conclusive, whether that debt arose from advances of money by the Union Stock Yards National Bank in the shape of permitted overdrafts to enable them to make advances on cattle to Bowen & Co. or to the complainants or to others, or from the promissory note of Rappal, Sons & Co., held by the bank and now overdue.

It is true that there are respectable authorities which contradict this proposition; not so many, however, as would at first sight seem to do so; because in several of the cases which have laid down the rule that a factor is to be deemed a trustee of the money in his hands, the character had in view under the term factor was evidently not that of a commission merchant, but of one merely authorized to collect the money due on an obligation or change the form of an investment. At any rate, the position of this court on the question has been too

distinctly taken and too repeatedly affirmed, and is, moreover, too well supported by a long line of earlier authorities, and by the reason of the case, to be abandoned now without weightier arguments than those which are adduced in opposition to it.

In the case of *Chapman* v. *Forsyth*, 2 Howard, 202, this court decided that the obligation of a factor to pay over to his consignor the net proceeds of goods sold was not a fiduciary debt, and was therefore included in a discharge in bankruptcy. The court say (p. 208):

> The second point is whether a factor who retains the money of his principal is a fiduciary debtor within the act. If the act embrace such a debt it will be difficult to limit its operation. It must include all debts arising from agencies, and indeed all cases where the law implies an obligation from the trust reposed in the debtor. Such a construction would have left but few debts on which the law could operate. In almost all the commercial transactions of the country, confidence is reposed in the punctuality and integrity of the debtor; and a violation of these is, in a commercial sense, a disregard of a trust. But this is not the relation spoken of in the first section of the act. * * * The act speaks of technical trusts, and not those which the law implies from the contract. A factor is not, therefore, within the act.

Clearly, then, the debt of a factor to his consignor for the proceeds of goods sold on consignment is on the same footing as any ordinary commercial obligation.

The doctrine here laid down has been ever since adopted by this court not only on the particular question decided, but as a guide to the decision of others more or less analogous. It has been thus adopted in *Neal* v. *Clark*, 5 Otto, 704, p. 708.

Later, in *Hennequin* v. *Clews* (111 U. S., 676), it was followed to the result that the debt arising from the

alienation by a banker of bonds deposited with him as collateral security, was included in a discharge in bankruptcy. Applying to it the principle laid down in *Chapman* v. *Forsyth*, the court say: "It is only a breach of contract and not a breach of trust." (p. 682.)

Of the decision in *Chapman* v. *Forsyth*, the court say, (p. 680):

> This decision was of course authoritative; it was not only followed, but approved, by the highest courts of several of the states * * * (p. 681). The question has recently been fully considered by this court, and the decision in *Chapman* v. *Forsyth* has been followed.

It is clear then that the doctrine of *Chapman* v. *Forsyth* is settled law in this court; and that here at least the debt of a factor to the consignor whose goods he has sold is of the same nature as any ordinary commercial obligation, and that his failure to pay over the proceeds or that portion of them which may be due to the consignors is—as Mr. Justice Bradley, applying the same principle, said of the failure of the banker to produce the bonds which had been deposited with him as collateral security—"only a breach of contract and not a breach of trust."

In all these cases the question was as to the *status* of the defaulting debtor. Obviously the case is much stronger in favor of a third party who had accepted the money in satisfaction of a *bona fide* debt.

In *Ward* v. *Brandt*, 11 Martin, 331, the Supreme Court of Louisiana applied the principle to a case like that which the complainants here have attempted to make out, where a consignor claimed a preference over other creditors of the factor for the amount due him on account

of his goods which the factor had sold. The court say, (p. 429):

The appellant insists that he has a privilege on the estate of the insolvents in preference to mere chirographary creditors, because placing merchandise in the hands of a factor does not transfer to him the property in it, and that the same privilege which exists on the thing attaches itself to the proceeds if the object be sold. The court thinks otherwise. The delivery of property to a factor to be disposed of confers a right to sell it; of course a sale by him divests the proprietor of his title. The case of *Clay* v. *his Creditors*, 9 Martin, is not at all like that now before us. Pledging an object neither alienates it nor confers a power on the pawnee to do so, unless in default of payment. If sold otherwise, the law justly gives a privilege; for the owner is deprived of his property without his consent. In the case of Clay already cited the court declared that when the property was in the hands of an insolvent, by virtue of a contract which did not transfer the owner's title to it, there existed a privilege on the object or if alienated, for its value. If the contract did transfer the title, that privilege was lost; and so we consider it if the owner authorizes another to make the transfer; for then, in case the proceeds cannot be traced, the agent becomes personally indebted.

In *ex parte* Dale & Co., Law Reports, 11 Chan. Div. 772, the West of England Bank, which was in liquidation, had received from Dale & Co. certain paper called "average orders" with instructions to collect and pay over the proceeds to the account of Dale & Co. with Glyn & Co. of London (who were agents of both parties); Dale & Co. having no account with the West of England Bank, but having frequently employed it as collecting agent. The bank made the collection and reported that it had remitted to Glyn & Co. This however had not been done, and on

the next business day the bank went into liquidation. The question was whether some £74 of the proceeds, which had been mixed with the general cash of the bank, was the property of Dale & Co. or belonged to the creditors generally. In deciding this case, Mr. Justice FRY said (p. 775):

It appears to me that there is a long line of authorities which regulate this case and to which I must pay the greatest attention. Before referring to them let me observe that, in my opinion, the agent receiving those average orders was bound to convert them, so to speak, into money, that is to say, was bound to receive the money for which the orders were given, and that he might with propriety place the money in his till, provided he directed his agents in London to credit the account of Messrs. Dale & Co., in London with the amount so received.

He then goes on to cite the decisions in *Whitcomb* v. *Jacob* (1 Salkeld, 161), *Ryan* v. *Rolle* (1 Atkyns, 165), *ex parte* Dumas (1 Atkyns, 172), *Scott* v. *Surman* (Willes, 400), *ex parte* Sayers (5 Vesey, 169), and *Taylor* v. *Plumer* (3 Maule & Selwyn, 562), all of which support the doctrine which he states as follows (p. 776):

If a factor properly converts goods into money, and that money gets mixed with his own money, that money can not be followed by the principal.

(p. 777.) Those authorities appear to me to prove that the £74, 17s, 7d, must be treated as being part of the common property of the bank; and in respect of that sum the claimants must come in as creditors.

Subsequently in the case of *Knatchbull* v. *Hallett* (Law Reports, 13 Chanc. Div., 696), recurring to the subject, the same judge says (p. 702):

If he [Hallett] had been merely the agent and bailee, and had received from her [Mrs. Cotterill] an authority to sell these bonds—an authority which, according to the proper interpretation to be put on it by the course of

dealing between them, implied a right in him to mix the produce of the sale with his own moneys, I should very probably have held that Mrs. Cotterill was merely a creditor of Mr. Hallett. But that is not the case here. The authority which she gave him was merely to hold these bonds for her, and the sale of these bonds was, in my judgment, a distinct violation of the duty he had undertaken. Therefore there was no authority from her which would justify him in mixing the produce of the bonds with his own moneys. * * * (p. 703.) Those circumstances, in my judgment, make the case entirely different from the series of authorities to which I referred in *ex parte* Dale & Co., where I came to the conclusion, rightly or wrongly, that the factor properly converted the goods into money, and that the money got mixed with his own money in accordance with the intention of the parties, and that in such a case the money could not be followed. That appears to me to be the law both at common law and in equity; some of the decisions to which I then referred being decisions in equity.

* * * I will only make this further observation, that it may very well be that the distinction which I have now drawn, and to which necessarily my attention was not so fully directed when I gave judgment in *ex parte* Dale & Co., may remove some of the force of the observations which I made at the end of that judgment as to the difficulty of reconciling the other authorities with the case of *Pennell* v. *Deffell*.

This case of *Knatchbull* v. *Hallett* subsequently coming before the Court of Appeal, Sir GEORGE JESSEL took occasion, while sustaining the decision, to repudiate the distinction which Mr. Justice Fry had laid down, and virtually to overrule the decision of *ex parte* Dale (although that case was not before the court), while at the same time recognizing the fact that it is supported by all the authorities to which Mr. Justice Fry had referred, and to declare broadly that proceeds in the

hands of a factor are to be treated as a trust fund, and appropriated to the consignor as long as they can be constructively traced, whether mingled with the moneys of the factor himself or not, excepting, of course, the case in which they have been paid away without notice of the consignor's rights. (Law Reports, 13 Chancery Div., pp. 713–718.) Among the judges whose decisions he thus sets aside are Lord Hardwicke, Chief Justice Willes, and Lord Ellenborough, masters of the law, at least equally eminent with any of those who in later days have assumed to overrule them. These earlier authorities expressly decide that a principal has no priority of claim to the money which a factor has received for the goods of his principal, unless that money has been kept separate from other money in the factor's possession.

It is true that in *Taylor* v. *Plumer*, 3 Maule & Selwyn, 562, Lord ELLENBOROUGH rested his declaration that a principal has no priority of lien on the general funds of his factor, solely on the ground of the indistinguishability of money in mass, a ground which is definitely abandoned in the English case of *Pennell* v. *Deffell* and, agreeably to the decision in that case, by contemporary courts of equity very generally. In confining himself to this ground, however, he may have had reference only to the particular kind of factor whose acts were under review in the case before him, a stockbroker employed to change an investment from one kind of stock to another.

There is a manifest distinction between such an agent and one who, like Rappal, Sons & Co., receives goods for the purpose of selling them, and is by no means uniformly—perhaps not ordinarily—bound to hand over to his principal the whole or the greater part of the pro-

ceeds. As regards a factor of this kind, there is great pertinency in the principle stated in *Ward* v. *Brandt*, which we have just cited.

Substantially the same distinction appears to have been in the mind of Lord Justice Thesiger, who, while expressing his concurrence in the decision of the case then in hand, which (as we have seen) was not that of a commission merchant but of an agent for making investments, says (Law Reports, 13 Chanc. Div., p. 723):

> All cases where it has been held that moneys mixed and confounded, but still existing, in a mass cannot be followed, may (I think) be resolved into cases where, although there may have been a trust with reference to the disposition of the particular chattel which those moneys subsequently represented, there was no trust, no duty, in reference to the moneys themselves beyond the ordinary duty of a man to pay his debts, in other words, that they were cases where the relationship of debtor and creditor had been constituted, instead of the relation either of trustee and *cestui que trust*, or principal and agent.

These words apply exactly to the position of the commission merchant who has performed his trust by making a *bona fide* sale of the chattels entrusted to him for that purpose.

On a comparison of all the opinions therefore, this court may perhaps still feel at liberty to maintain the position originally taken by it on this question and may prefer, not indeed *errare cum Platone* but to be safe with Lord Hardwicke, Chief Justice Miller and Lord Ellenborough rather than affect novelties with Sir George Jessel.

In *Baker* v. *The New York National Exchange Bank*, 100 N. Y., 31, after very positively declaring the fiduciary character of the factor's debt to the consignor, the court make this significant reservation (p. 34):

> The relation between a principal and a consignee for sale is, however, subject to modification by express agreement, or by agreement implied from the course of business or dealing between them. The parties may so deal that the consignee becomes a mere debtor to the consignor for the proceeds of sales, having the right to appropriate the specific proceeds to his own use.

Could there be a stronger case for this exception than that where the consignee has been constantly paying drafts on the consignments in advance of any sale? In such a case could it be otherwise than that he should be entitled to appropriate to his own use the *specific proceeds* when at last he receives them? And would not a bank allowing the consignee to overdraw his account for the express purpose of enabling him to pay such drafts, have a right to regard him as coming within the exception?

In the case of the *Central National Bank* v. *The Connecticut Mutual Life Insurance Co.*, 104 U. S., 693, in which the late Mr. Justice Matthews delivered the opinion of the court, the decision in *Knatchbull* v. *Hallett* and the doctrine that moneys held in a fiduciary capacity may be followed and appropriated to the beneficiary, notwithstanding they have been mingled with the moneys of the *quasi* trustee, are approved in general terms, but no notice was taken, and the case then before the court did not require that notice should be taken, of the question whether or not a commission merchant is to be deemed a fiduciary; and there is not the slightest indication of

any intention to overrule the previous well considered decisions of this court on that point.

We believe, therefore, that we are warranted by the uniform course of decision in this court, and by the very decided preponderance of authority elsewhere, in contending that when a commission merchant who has been in the habit of making advances on the goods consigned to him, has in performance of his trust sold any particular consignment and deposited the proceeds to his personal account, he is, as to any claim of the consignor on account of the sale, a debtor merely, and not a fiduciary, and the consignor has no right in the money so deposited over any other creditor whose claim is equally valid in law.

IX.

Whatever claims the complainants may or may not have on Rappal, Sons & Co., those claims involve no liability on the part of the appellant.

It received the money which the bill alleges, and the decree finds, to have belonged to complainants, on deposit in the ordinary course of its business as a bank, without knowledge or notice that it belonged in any way to any one but Rappal, Sons & Co. It applied the money thus received, partly to the payment of their checks in favor of sundry persons not concerned in this suit, and

partly to the repayment of loans which it had made them mainly, if not entirely, to enable them to make advances on cattle consigned to them, those loans being made on the faith of the understanding that they should be repaid from the proceeds of cattle sold.

The money had been all appropriated in this way before the appellant bank had any intimation of the complainants' pretensions.

This being so, even if the Gillespies had been entitled to receive the money from Rappal, Sons & Co., they have no claim in law or equity against the Union Stock Yards National Bank.

It was an established practice of the Union Stock Yards National Bank, growing out of the requirements of business at the Stock Yards, to make a very large proportion of its loans by simply allowing overdrafts. (Record, p. 50.) Whenever a commission merchant represented that he had a specific consignment of cattle, whether in the yards or on the road, on which it was important for him to make advances to a specified amount, the bank almost uniformly gave him permission to draw checks on it for that amount. (Record, p. 213.)

Experience has proved these to be a safe class of loans, (Record, p. 213,) and no instance is known of a commission merchant making any misrepresentation about consignments of cattle to him on which the privilege of overdrawing was asked. (Record, p. 51.)

Interest is charged on these overdrafts, as on other loans. (Record, pp. 50, 213.)

Rappal, Sons & Co. had been allowed to make numer-

ous overdrafts on these ordinary terms, ever since they began business. (Record, p. 213.)

A transcript of their account for the whole year 1885 up to and including the time of the transactions in question, from the ledger of the bank, shows 236 entries of daily balances; all but 37 of these were debit balances, resulting from overdrafts such as have been mentioned. (Exhibit 1 of Boprey's Testimony, between pp. 468 & 469 of Record, introduced and explained on p. 306.)

Of the 37 credit balances, 5 were in January, 4 in February, 4 in March, 10 in April, 9 in May, 1 in June, 1 in July, 2 in August, 1 in September, and 3 in October. The two sides of the account were equalized on the 8th of that month; the last entry, which was on the 9th, being a merely formal one denoting the substitution of one note for another. (Record, p. 81.)

At the close of business on Friday, the 2d of October, 1885, Rappal, Sons & Co.'s account was overdrawn more than $18,000 (Record, p. 34; last p. of insertion betw. 468 & 469), that is, so much remained unpaid of money which the bank had loaned them for the purpose of making advances on cattle consigned to them. (Record, p. 4 of Insertion, betw. pp. 468 & 469.)

At the same time they also owed the bank $7,000 on a note a few days overdue, which debt, by means of renewals, had been in existence since June 13, if not longer. (Record, pp. 80, 81, 48, 49, 215.) The expectation of the parties was that it would be replaced by the personal note of the elder Rappal, whose return was expected shortly. (p. 215.) Rappal, Sons & Co.'s deposits from that time up to and on the 6th, were adequate to pay some $17,000 of checks drawn by them in

favor of persons other than the bank, to counterbalance the overdraft and to pay $2,993.27 on the $7,000 note, the bank accepting a new note of F. J. Rappal, Sr., secured by a mortgage, for the remaining $4,006.73, and giving up the old note. (Record, p. 401, Insertion betw. pp. 468 & 469, pp. 112 & 113, 81 & 82.)

This note of the elder Rappal's was received on the 6th, though the transaction was not entered until the 9th, the delay being presumably for the purpose of having the mortgage recorded in another county (where the land was situated) and returned. (Record, p. 217.)

These deposits were all received by the appellant bank and applied as has just been stated, without any suspicion on the part of the officers of the bank that any of the money thus received was claimed by the complainants, or was not rightfully at the disposal of Rappal, Sons & Co., and without any intention whatever of getting the money of complainants, or of anybody else other than Rappal, Sons & Co., by any concealment of the affairs of the bank or of that firm.

Mr. Washburn, the president of the bank, who took charge in person of the closing of the account of the bank with Rappal, Sons & Co., expressly so testifies as to his own information and intent. (Record, p. 217.)

Mr. Conrad, the cashier, testifies to the same effect for himself. (Record, p. 328.)

And Mr. Washburn testifies that there could have been no such scheme on the part of the bank without the privity and instigation either of the president or the cashier. (p. 218.)

By reference to the transcript from the bank ledger (Record, p. 3 of Insertion betw. pp. 468 & 469), it will be seen that the deposits which made good the overdrafts were made on Saturday the 3d of October.

From the nature of the business of Rappal, Sons & Co., and from the representations they had made when they were last permitted to overdraw, the natural inference would be that those deposits were in great part derived from sales of cattle. Even that inference was not a necessary one, as there were other sources from which they might have obtained money. (Record, p. 104.)

Beyond that uncertain inference, the managers of the bank had no knowledge, nor did it occur to them that there was any occasion to inquire, as to the source from which those $23,000 of deposits were derived. The deposits were received and credited as a mere matter of course, without any actual cognizance of anybody connected with the bank, but the teller and book-keeper. So Conrad, the cashier, testifies. (Record, p. 236, first complete paragraph.) The officers of the bank had no suspicion of any embarrassment whatever of Rappal, Sons & Co., and would have allowed them another overdraft at any time on that day just as freely as at any previous time. (Record, pp. 214, Washburn's testimony; p. 234, Conrad's testimony.)

The two checks by which the payment of $3,000 on the overdue note was made, were given on Tuesday, the 6th of October, after the attention of the cashier and the president had been directed to the state of Rappal, Sons

& Co.'s affairs, and after the two younger members of the firm had given Mr. Washburn, the president, a statement of their condition, from which the expediency of a liquidation had become apparent. In consistency with the position which they have maintained throughout, the Rappals made no mention of any claim of complainant, but stated to Mr. Washburn that Bowen & Co. were indebted to them for previous advances, and that they expected cattle of Bowen & Co.'s next day—the conversation was on Monday, the 5th—and from the proceeds of those would be able to make a payment on the note. Washburn replied: "If Bowen & Co. owe you, you can make an offset, and do what you please with the money. If you have any money *that belongs to you*, I want it on this note." On this understanding, the partial payments on the $7,000 note were accepted by the bank. And although it was Mr. Washburn's desire to have the note paid entirely, yet by his advice, the proceeds of certain other cattle which came along with those of Bowen & Co., but belonged to another owner, who was not indebted to Rappal, Sons & Co., were remitted to the consignor. (Record, pp. 215 and 216.)

Lawrence L. Rappal, with whom principally Washburn held this conversation, had previously stated substantially the same facts to Mr. Conrad, the cashier, and therefore did not distinctly recollect what was said in the conference with Mr. Washburn, but he is positive that no mention was made of Gillespies as having any interest in the cattle whose proceeds were to be applied on the note. (Record, p. 293.)

It was not until after these arrangements had all been made, and the rights of the parties fixed, the elder Rappal having given the new note and thereby entitled the firm of Rappal, Sons & Co. to the surrender of the old one, that the bank received the first vague intimation of a claim on the part of complainants. (Record, pp. 216, 217.) On Wednesday, the 7th, as near as can be ascertained, Thomas E. Gillespie, one of the complainants, came to the bank and made some inquiries of Mr. Conrad, the cashier, about Rappal, Sons & Co.

Conrad has no recollection of his making any claim or assertion of ownership or interest in the cattle or the proceeds of them. He impressed Conrad as having no definite knowledge about the drafts in question, but as enquiring in a general way about the shipments of cattle and about Rappal, Sons & Co. (Record, pp. 241–2.)

Mr. Washburn, to whom Conrad related the interview, has the impression—not a definite recollection—that Conrad told him that Gillespie had said that the bank had money, the proceeds of the sale of cattle which belonged to complainants, or on which they had some claim. (Record, pp. 216, 228.)

Complainants have not chosen to take the testimony of Thomas E. Gillespie himself as to this interview, though they examined him on other matters. Doubtless he did no more than give a vague intimation of complainants' claim. Whatever he said, it was after the transaction between Rappal, Sons & Co., and the bank had been closed.

There is no evidence to contradict or question the testimony of the president and cashier of the bank with

regard to the indebtedness of Rappal, Sons & Co. to the bank, or the circumstances under which it was paid. And it clearly establishes a case of reception of the money by the bank in good faith to pay a *bona fide* debt, the greater part of which was contracted on the faith of the understanding that it would be repaid in precisely the manner in which it was, while the rest was evidenced by a promissory note already due, which was given up in consideration of the partial payment made and the giving of a new note for the part remaining unpaid; all, except perhaps the manual delivery of the old note, being done without any notice of any claim on the part of complainants.

It is too late to question in this court the validity of such a transaction.

1. Even if the Rappals had had no right whatever to make the payments they did, and even if the appellant bank had been chargeable with a high degree of negligence, yet receiving the money for a valuable consideration in the belief that it was theirs, it is entitled to keep it against all the world.

In the case of *Ford* v. *Hopkins*, 1 Salkeld, 283, Chief Justice HOLT says (p. 284):

"If money is stolen and paid to another, the owner of the money can have no remedy against him that received it."

In *Miller* v. *Race*, 1 Burrow, 452, Lord MANSFIELD says (p. 457):

It has been said that the reason why money cannot be followed is because it has no ear-marks; but this is not true. The true reason is upon account of the currency of it; it cannot be recovered after it has passed in currency. So in case of money stolen, the true owner cannot recover it after it has been paid away fairly and honestly upon a valuable and *bona fide* consideration.

The question before the court in this case was whether a bank note payable to bearer stood on the same footing as money; and the court unanimously held that it did.

In *Murray* v. *Lardner*, 2 Wallace, 110, it was held that the *bona fide* purchaser for value (however negligent) of stolen negotiable bonds, acquired a perfect title. The court (Mr. Justice SWAYNE delivering the opinion) lay down the following propositions (p. 121):

The possession of such paper carries the title with it to the holder. The possession and title are one and inseparable.

The party who takes it before due for a valuable consideration, without knowledge of any defect of title and in good faith, holds it by a title valid against all the world. *Suspicion of defect of title or the knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence* on the part of the taker at the time of the transfer, will not defeat his title. That result can be produced only by bad faith on his part. *The burden of proof lies on the person who assails the right claimed by the party in possession.* SUCH IS THE SETTLED LAW OF THIS COURT.

(P. 122): We are well aware of the importance of the principle involved in this inquiry. These securities are found in the channels of commerce everywhere, and their volume is constantly increasing. They represent a large part of the wealth of the commercial world. The interest of the community at large in the subject is deep-rooted and wide-branching. It ramifies in every direction, and its fruits enter daily into the affairs of persons in all conditions of

life. While courts should be careful not so to shape or apply the rule as to invite aggression or give an easy triumph to fraud, they should not forget the considerations of equal importance which lie in the other direction. In *Miller* v. *Race*, Lord Mansfield placed his judgment mainly on the ground that there was no difference in principle between bank notes and money. In *Grant* v. *Vaughan* he held that there was no distinction between bank notes and any other commercial paper. At that early period his far-reaching sagacity saw the importance and the bearings of the subject.

Hence it is evident that the court put negotiable bonds, so far as the acquiring of title goes, on precisely the same footing as money. It necessarily follows that in our case, even if the money turned over to the appellant bank by Rappal, Sons & Co. had been the money of the complainants, and there had been facts known to the bank which would have led an ordinarily prudent man into a line of inquiry which would have shown that it was the money of complainants, yet unless it is *proved* that the bank believed it to be complainants' money, or at least not Rappals', the title of the bank is unassailable.

2. Whether the discharge of a preëxisting debt is a consideration sufficient to give validity to a transfer made by one who has no right in himself, has been much questioned in some jurisdictions as to negotiable securities—we are not aware that any one has ever questioned it as regards money; but whether as to negotiable securities or money, there can be no question about it here.

In *Swift* v. *Tyson*, 16 Peters, 1, Mr. Justice STORY,

delivering the (on this point) unanimous opinion of the court, says, (p. 16):

"In the present case the plaintiff is a *bona fide* holder without notice, for what the law deems a good and valid consideration, that is, for a preëxisting debt, and the only real question in the cause is, whether under the circumstances of the present case, such a preëxisting debt constitutes a valuable consideration in the sense of the general rule applicable to negotiable instruments."

After showing that in the courts of New York, where the case then before the court arose, the question was then in a somewhat uncertain state, he goes on to show that as to (p. 19)

"contracts and other instruments of a commercial nature, the true interpretation and effect are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence. * * * It becomes necessary for us, therefore, upon the present occasion to express our own opinion of the true result of the commercial law upon the question now before us. And we have no hesitation in saying that *a pre-existing debt does constitute a valuable consideration* in the sense of the general rule already stated as applicable to negotiable instruments. Assuming it to be true (which, however, may well admit of some doubt from the generality of the language) that the holder of a negotiable instrument is unaffected with the equities between the antecedent parties of which he has no notice, only where he receives it in the usual course of trade and business for a valuable consideration before it becomes due, we are prepared to say that receiving it in payment of or as security for a preëxisting debt, is according to the known usual course of trade and business.

Mr. Justice Catron dissented, solely upon the question whether the mere *securing* of a preëxisting debt was a sufficient consideration. (p. 23.)

In stating the reasons for their decision, the court say, (16 Peters, 20):

It is for the benefit and convenience of the commercial world to give as wide an extent as practicable to the credit and circulation of negotiable paper, that it may pass not only as security for new purchases and advances made upon the transfer thereof, but also in payment of and as security for preëxisting debts. * * * The debtor has the advantage of *making his negotiable securities of equivalent value to cash.*

This shows that the court considered that in their decision they were doing no more than to put negotiable paper on the same footing as money, and that they deemed it beyond question that a creditor taking money in payment of an antecedent debt, without notice that it was the money of some person other than the debtor paying it in, acquired an irrefragable title to it against a third person who might lawfully have reclaimed it from the debtor.

In the case of the *Brooklyn City & Newtown R. R. Co.* v. *The National Bank of the Republic*, 102 U. S., 14, the question as to the position of the *bona fide* taker of negotiable paper as security merely for a preëxisting debt, was directly involved; and in an elaborate discussion the doctrine of *Swift* v. *Tyson* was fully sustained. Mr. Justice Clifford delivered a separate concurring opinion in which he says, (p. 38):

Possession of such an instrument before maturity, if endorsed in blank or payable to bearer, is *prima facie* evidence that the holder is the owner and lawful possessor of the same; and nothing short of proof that he had knowledge at the time he took it of the facts which impeach the title as between the antecedent parties, not even gross negligence if unattended with *mala fides*, is sufficient to overcome the effect of that evidence or to invalidate the title of the holder supported by that presumption.

Still more recently in the case of the *People's Savings Bank* v. *Bates*, 120 U. S., 556, this court, while holding that the principles affirmed in *Swift* v. *Tyson* do not apply to the case of a chattel mortgage, fully recognize them in their application to negotiable securities. Mr. Justice Harlan, delivering the opinion of the court, says:

> The rules which have been established in the interests of commerce to facilitate the negotiation of mercantile paper, which for all practical purposes passes by delivery as money and is the representative of money, ought not in reason to embrace instruments conveying or transferring real or personal property as security for the payment of money.

In the very recent case of the *Atlantic Cotton Mills* v. *The Indian Orchard Mills*, 147 Mass., 268, the court say (p. 273):

> "There is no doubt that a thief may use stolen money, or stolen negotiable securities before their maturity, to pay his debts; and in such case an innocent creditor may retain the payment."

In the English case of *Misa* v. *Currie*, the Court of Exchequer, the Exchequer Chamber and the House of Lords successively enforced this principle in the case of a check which had been obtained from Misa by fraud, all the judges concurring in all the three courts, except Lord Coleridge, who in the Exchequer Chamber dissented solely on the ground that the rule was a hard one and had never been extended to checks, and he saw no necessity for carrying it any farther than it had gone. This fact gives great emphasis to the propositions in which he concurs. He says (Law Rep., 10 Exchequer, 165):

It is too late to dispute that a preëxisting debt due to the transferee of a bill entitles him to all the rights of a holder for value.

He also adopts the language of Willes J., in the previous case of *Whistler* v. *Foster*, as follows:

The general rule of law is undoubted that no one can transfer a better title than he himself possesses. To this there are some exceptions, one of which arises out of the law merchant as to negotiable instruments. These, being part of the currency, are subject to the same rule as money; and if such an instrument be transferred in good faith for value before it is overdue, it becomes available in the hands of the holder, notwithstanding fraud which would have rendered it unavailable in the hands of a previous holder.

Lord Coleridge farther says (p. 168):

To me the rule seems hard in the case of money, but it is well settled. It seems hard in the case of bills due at a future date, which are said to be like money and to stand upon the same foot; but that also is well settled.

3. As we have already seen, the debt of Rappal, Sons & Co. to the appellant bank was largely in the form of permitted overdrafts on their general account, and to that extent was paid by their simply making deposits on that account, those deposits being appropriated without any action on the part of the managing officers of the bank, by the ordinary routine of its business, automatically as it were, in virtue of what is known as the banker's lien. This is well shown in the following passage from the examination of Mr. Washburn by the complainants' counsel (Record, p. 103):

Q. Did your bank appropriate the money that was deposited by Rappal, Sons & Co. in your bank on the 2d and 3d of October, and on the 6th of October, in payment of the overdraft which existed on the 1st and 2d of October, of Rappal, Sons & Co.? A. Why, no, in the sense that your question would seem to imply. Rappal, Sons & Co. were overdrawn; they made deposits and then they were not overdrawn.

Q. And those deposits that they made between the 2d of October and the 6th were kept by you to discharge or liquidate the overdraft that they had at that time, were they not? A. My answer to that is, that they were overdrawn, and they deposited, and then they were not overdrawn.

The principle is thus stated by Mr. Morse, in his treatise on banking:

Of course, there is a power in the bank to allow overdrafts. By negotiating with the authorized and proper officials a customer may make a legal and binding arrangement by which his overdrafts, to a certain amount named and under the circumstances agreed upon, shall be honored. The dealing is in the nature of a loan; it is placing money at his disposal and control. There may be a standing agreement, binding on the bank for a definite period. Or there may be a mere naked permission revocable at will.

Morse on Banking, p. 375, (2d ed).

The rule may be broadly stated that the bank has a general lien on all moneys and funds of a depositor in its possession, for the balance of the general account. * * * When payment upon an overdraft, a discount, an acceptance, or other species of advance or loan by the bank to him creates an indebtedness on his part, all the funds which the bank has or obtains to his credit may be applied upon such indebtedness until it is fully discharged. *Id.*, p. 42.

The operation of the principle may be farther illustrated by the following extracts. In the case of the *Commercial*

Bank v. *Hughes*, 17 Wendell 94, Cowen, J. says of deposits in bank (p. 100):

I understand these deposits to create the relation of debtor and creditor. The bank takes the money in the nature of a gratuitous loan, and charges itself with a debt absolutely due to the depositor. It is not the case of a technical bailment; should money be lost without the fault of the bank, it would be liable. The transaction is called a deposit, and formerly perhaps was so in fact, and may still be made so. But such is not the course of business. * * * Between two persons mutually indebted, *the balance is the debt.*

In Clayton's case, 1 Merivale, 572, the question was whether Clayton could hold persons who had been liable when he made a certain deposit, but who afterwards ceased to be so, for the amount of that particular deposit on the ground that his subsequent drafts were intended to be against other funds and not against that.

In deciding the case, Sir Wm. Grant lays down a rule which has been regarded as authoritative ever since. He says (p. 608):

In the case of a banking account where all the sums paid in form one blended fund, the parts of which have no longer any distinct existence, neither banker nor customer ever thinks of saying: "This draft is to be placed to the account of the £500 paid in on Monday, and this other to the account of the £500 paid in on Tuesday." There is a fund of £1,000 to draw upon, and that is enough. In such a case there is no room for any other appropriation than that which arises from the order in which the receipts and payments take place and are carried into the account. Presumably it is the sum first paid in that is first drawn out, It is the first item on the debit side of the account that is discharged or reduced by the first item on the credit side. *The appropriation is made by the very act of setting the two items against each other. Upon that principle all accounts current are settled*, and particularly cash accounts.

The case of *Misa* v. *Currie* (Law Reports, 1 Appeal Cases H. of L., 554), to which we have already referred, was one of a banker's lien. In his opinion in the House of Lords, affirming the previous decisions of the Exchequer and Exchequer Chamber in favor of the lien, Lord Hatherly said (p. 569):

If it were necessary I should be prepared to hold in this case, according to the decision which has been so frequently referred to in the case of *Brandao* v. *Barnett*, that the custom of bankers is now perfectly well established and must be known to every mercantile person in the city of London. Mr. Misa, like others, is bound by his knowledge of that custom. Of course he must have been perfectly well aware that all moneys paid into a bank are subject to a lien, and that all documents as well as moneys deposited with a banker may be subject, on the banker's part, to a lien in respect of any balance that may be due to him from his customer. * * *

(571.) "It appears to me that it would be a very serious thing indeed in its effect upon the numerous transactions carried on by means of checks in the city of London, if we were to hold that any bankers holding those enormous drafts which are drawn daily, and which we read of in the accounts of the transactions of the clearing-house, are to be exposed to an inquiry as to what equities may subsist between any one of their customers (upon all of whose documents delivered to them they have supposed themselves to have a lien) and third persons, so that they might find themselves affected with equities with regard to that customer, and consequently be unable to give that credit which this right of lien at present enables them to give, and thereby contributes so much to carrying forward the vast trade of this metropolis.

In *Brandao* v. *Barnett*, 12 Clarke & Finnelly, 787, the House of Lords emphatically affirmed the doctrine of the banker's lien, though holding that on the particular facts

before them it did not apply, because there was an implied agreement that the exchequer bills in question should be received by the bankers for safe-keeping merely, and not on the customer's general account. In giving judgment, Lord Campbell says (p. 805):

I am of opinion that the general lien of bankers is part of the law merchant, and is to be judicially noticed like the negotiability of bills of exchange or the days of grace allowed for their payment. * * * I think that the defendants were entitled to consider the exchequer bills as the property of Burn, without any express representation by him to that effect. Exchequer bills are negotiable securities passing by delivery. The holder of negotiable securities is assumed to be the owner, and third parties acting *bona fide* may treat with him as owner. It is admitted that Burn might have sold these exchequer bills or pledged them by an express contract, without any representation that they were his own property. But the right acquired by a general lien is an implied pledge; and where it would arise, supposing the securities to be the property of the apparent owner, I think it equally exists, if the party claiming it has acted with good faith, although the subject of that lien should turn out to be the property of a stranger.

There was no dissent. Lord Lyndhurst, Lord Brougham, and Lord Cottenham, Lord Chancellor, took part in the hearing, and Lord Lyndhurst expressly declared his entire concurrence in the opinion of Lord Campbell. (p. 810.)

In *McDowell* v. *Bank of Wilmington & Brandywine*, 1 Harrington, 369, the plaintiff was endorser on a note, and the bank had obtained judgment against him as such, which they were now seeking to enforce by *scire facias*. He sought to enjoin them in equity, on the ground that

the maker had since been a depositor of the bank, having balances more than sufficient to satisfy the judgment, and that the bank had neglected to appropriate the balances to this purpose. The bank answered that the account was with the maker as a justice of the peace, and not a general account. There were some indications of this, but the court held that it was not proved. The maker himself testified that it was a general account, and that the funds in his hands as justice were deposited on his personal account. It was also shown that protest fees accruing to him as notary public for the bank were credited to him by the bank on the same account. The court say (p. 382):

In our judgment it can only be considered as a general account of Thomas McDowell with the bank, such as is usually kept by depositors with a bank. It was under the entire control of Thomas McDowell individually. His creditors might have attached any money due on it. The bank had the right to appropriate to the note endorsed by the complainant, or any other debt due to it from Thomas McDowell, so much of his money remaining in bank to his credit on this bank account as might be sufficient for this purpose; and as they have neglected to make this appropriation to the note, the important question arises whether, in relation to the complainant, it was not the duty of the bank to have done it; and whether by neglecting this duty and paying over to Thomas McD. the money in their hands belonging to him, the complainant is not in equity held discharged from all claim by virtue of the aforesaid judgment?

They answer this question in the affirmative.

In *Marsh* v. *Oneida Central Bank*, 34 Barbour, 298, the Supreme Court in General Term (Bacon, Allen, Mullin and Morgan, JJ.), unanimously reversed the judgment of

the Oneida County Court in favor of the plaintiff, who, as assignee of Hyland, a depositor, had sued for a balance of deposit. The bank set up in defense that the money was deposited in part payment of a note past due, on which the bank had recovered a judgment before the assignment. Allen, J., giving the opinion of the court, says (p. 299):

It is not necessary to pass upon this question of fact. Upon the theory of the plaintiff, that the money was deposited generally to the credit of Hyland, and was not appropriated to the payment of the note or to any other special purpose, the judgment should be reversed. The deposit, not being a special deposit entitling the depositor to a return of the same money deposited in specie, created the relation of debtor and creditor between the depositor and the bank, the latter becoming a debtor to the former for the amount deposited, and liable to pay on demand. The bank had the right at any time to apply the amount in payment of the note then past due.

In a case to which we have already occasion to refer, that of the *Central National Bank* v. *The Conn. Mutual Life Ins. Co.*, 104 U. S., 54, the doctrine of the banker's lien is stated by this court in the following terms (p. 71):

Ordinarily that attaches in favor of the bank upon the securities and moneys of the customer deposited in the usual course of business, for advances which are supposed to be made upon their credit. It attaches to such securities and funds, not only against the depositor but against the unknown equities of all others in interest, unless modified or waived by some agreement, express or implied, or conduct inconsistent with its assertion.

4. In the case of *The Marine Bank* v. *The Fulton County Bank* (2 Wallace, 252), this court had occasion to determine the position of a bank receiving paper for collection and holding the proceeds to the credit of the correspondent from whom that paper was received, and they say, Mr. Justice Miller delivering the opinion (p. 256):

> The counsel have argued as to the effect of mixing the money of plaintiff [the Fulton County Bank] with that of defendant [the Marine Bank]. In the view we take of the matter, there was no such admixture. It being understood between the parties that when the money was received it was to be held as an ordinary bank deposit, it became, by virtue of that understanding, the money of the defendant the moment it was received.

Of course, then, the money deposited by Rappal, Sons & Co. in the ordinary course of business with the appellant the Union Stock Yards National Bank, the latter having no notice of any trust charged upon it, became in like manner the money of the appellant bank, and complainants had no more claim on it than on any other money which had been received by the appellant bank in the ordinary course of its business.

The same principle is affirmed by Mr. Justice Clifford delivering the opinion of the court in *Thompson* v. *Riggs*, 5 Wallace, 663. He says (p. 678):

> Where the deposit is general, and there is no special agreement proved, the title of the money deposited, whatever it may be, passes to the bank, * * * and the bank becomes liable for the amount as a debt.

The same rule is laid down in the case of the *National Bank of the Republic* v. *Millard*. 10 Wallace, 152, Mr. Justice Davis delivering the opinion. He says (p. 155):

> It is no longer an open question in this court that the relation of banker and customer in their pecuniary dealings is that of debtor and creditor. It is an important part of the business of banking to receive deposits; but when they are received, unless there are stipulations to the contrary, they belong to the bank, become part of its general funds, and can be loaned by it as other moneys. * * * The contract between the parties is purely a legal one, and has nothing of the nature of a trust in it.

The facts of our case bring it far within the conditions prescribed by the authorities we have cited, for the enforcement of a banker's lien.

X.

The appropriation by the appellant bank of Rappal, Sons & Co's. deposits would be fully justified by the rule laid down by this court for the application of the banker's lien to negotiable paper received from a correspondent for collection, in the case of *The Bank of the Metropolis* v. *The New England Bank*, 1 Howard, 234 and 6 Howard, 212. There the Bank of the Metropolis and the Commonwealth Bank had been in the habit of transmitting negotiable paper to each other for collection, and allowing the proceeds to remain on deposit in the collecting bank until certain periodic times of settlement, when the balance due on the fixed day from the one bank or the other was drawn for. The paper for

the proceeds of which the suit was brought by the New England Bank was the property of that bank, but had been endorsed over to the Commonwealth Bank so as ostensibly to transfer the property, and had been transmitted by the latter to the Bank of the Metropolis, without notice of any other ownership. The Commonwealth Bank having become insolvent, the Bank of the Metropolis claimed the right to hold the proceeds of this paper to apply on the balance due it from the Commonwealth Bank. And this court held that it might do so, in view of its having no notice that the paper did not belong to the Commonwealth Bank, and in view of its having in the course of dealings between the two, permitted the Commonwealth Bank to retain temporarily the proceeds of paper which it had collected for the Bank of the Metropolis, on the faith of paper to be forwarded to the Bank of the Metropolis for collection in like manner. (1 Howard, pp. 239 & 240.)

The doctrine is succinctly stated in the form of a suggested instruction for the jury, in 6 Howard, p. 227, as follows:

"If the jury find that, in the dealings mentioned in the testimony, the Bank of the Metropolis regarded and treated the Commonwealth Bank as the owner of the negotiable paper which it transmitted for collection, and had no notice to the contrary and, upon the credit of such remittances made or anticipated in the usual course of dealing between them, balances were from time to time suffered to remain in the hands of the Commonwealth Bank, to be met by the proceeds of such negotiable paper; then the plaintiff in error is entitled to retain against the defendant in error for the balance of account due from the Commonwealth Bank.

The position of the Union Stock Yards National Bank in the case now before the court comes fully within the

terms of this rule. Advances of money to pay for consignments of cattle had been regularly made to the Rappals through a long course of dealing, on the credit of deposits to be made out of the proceeds of cattle sold; and, therefore, on the insolvency of the Rappals, the bank was entitled to retain the money which had been deposited by them as their own, and as to which it had no notice of any other ownership, for the balance of account due from them.

XI.

Besides the pre-existing debt of the Rappals to it, the appellant bank gave other valuable consideration for their deposits made with it on the 2d, 3d, 5th and 6th of October, inasmuch as on the faith of those deposits it paid twenty-four of their checks in favor of persons other than the bank itself, amounting in all to more than $24,000 (Record, pp. 112 & 113), and also surrendered and canceled the note and collateral securities of Rappal, Sons & Co., on which more than $7,000 was due, in exchange for a new note of only $4,006.73. (Record, p. 44.) The books of the bank show credits on this $7,000 note on the 5th and 6th of October to an amount of more than $2,093. The final payment of over $4,006 is credited October 9 (Record, p. 81) but the transaction was actually consummated, fixing the rights of the parties under it, on the 6th. (Record, p. 217.)

Thus giving up securities held by it and paying out

large sums of money on the faith of those deposits, the appellant bank brought itself fully within the terms, not only of the rule laid down by this court, but of the stricter rule adopted by the courts of the state of New York and urged upon this court in the argument of *Swift* v. *Tyson*.

The final formulation of that rule appears to have been made in the decision of the Court of Errors in the case of *Stalker* v. *McDonald*, 6 Hill, 93, where Chancellor Walworth in his opinion says (p. 96):

"Where [the holder] has received [the note] for an antecedent debt, either as a nominal payment, or as a security for payment, *without giving up any security for such debt* which he previously had or *paying any money or giving any new consideration*, he is not a holder of the note for a *valuable* consideration so as to give him any equitable right to detain it from its lawful owner."

Senator Lott (afterwards a judge of the Supreme Court), who delivered the only other opinion, cites, with approval, (p. 113) the following language of Senator Viele in the earlier case of *Coddington* v. *Bay*:

The true test I take to be that when the holder is left in as good a condition after a retransfer as he would have been in had no transfer taken place, there the title of the owner shall prevail.

The doctrine, as summed up in 1 Edwards on Bills, (3d Ed.), § 452, pp. *321 and *322, is that where the holder has parted with anything of value, or has accepted the security as absolutely extinguishing a preëxisting debt, he is a holder for valuable consideration.

It is manifest that the appellant bank did both these things in consideration of those deposits of Rappal, Sons & Co., which the complainants now seek to reclaim from it.

XII.

The undisputed facts establish the right of the appellant so clearly, and the decision appealed from is so manifestly the result of the learned Circuit Judge having, as we cannot but think, entirely overlooked the repeated and precisely defined declarations of this court, that it seems superfluous to enter into an examination of the circumstances which, as the complainants below contended and the court below found, were tainted with a degree of suspicion which would have put a prudent man on inquiry as to Rappal, Sons & Co.'s right to the money which they deposited. The decree appealed from is, however, so entirely based on the supposition of such circumstances, and so much was made of that supposition, or rather pretense, by the complainants below, that an examination of the circumstances seems necessary to a complete presentation of the case. The facts are these:

The first of the drafts in question, that for $6,200, dated September 30, was on that day mailed by the Kan-

sas City Stock Yards Bank to the appellant bank for collection, and was received by the appellant, in the same letter with six other drafts on divers persons, on Friday the second day of October. (Record, pp. 84–5.) This was in accordance with the regular course of the mails, letters from Kansas City being received at the Union Stock Yards the second day after mailing. (Record, pp. 190, 202–3, 204, 237.) It was, in accordance with the usual course of business, turned over to Caldwell, the collection teller, who sent it out with the other paper to be collected that day, by the usual messenger. (Record, pp. 123–4.) The messenger usually got to the offices of the commission merchants at a time when the proper person to pay or reject a draft was out for lunch; accordingly his custom was to leave the paper at the drawee's office, whereupon the drawee would pay or return it when the proper person came back from lunch. (Record, pp. 124, 293.) In accordance with this practice, the draft in question was left at Rappal, Sons & Co.'s office. (Record, p. 124.) The same afternoon, shortly before the bank closed, F. J. Rappal, Jr., brought back the draft, saying (as Caldwell testifies) that it would be paid in the morning, or (as he himself testifies) that they would not pay it that day, words which would very naturally be understood as Caldwell testifies. (Record, pp. 124, 283.) Caldwell thereupon handed the draft over to Jameson, the assistant cashier, who was also the notary who protested the unpaid paper, (Record, p. 125), and Jameson protested it the same evening. (Record, p. 190.) Notice was sent the same evening to the Kansas City bank in the following way: The collection teller had, in accordance with the regular practice of the bank, written a letter to the Kansas City bank, before sending out the

drafts, acknowledging the receipt and reporting the collection of them, specifying each. This letter had been signed by the cashier and returned to the collection teller (Record, pp. 192–3). On the return of the draft on Rappal, the collection teller (according to the custom in such case) drew a line through the mention of that draft in the letter, and corrected the footing of the list accordingly, thus indicating that the dra
been paid. The cashier knew nothing of this.
p. 193.) The letter, as thus amended, was ma
Kansas City bank the same evening (Record, p. 125); and the cashier of the Kansas City bank admits that it amounted to notice of the non-payment of the draft. (Record, p. 326.)

This was all that, according to the ordinary course of business, and the obligations imposed by law upon a bank undertaking collections, should have been done that day. But the Kansas City Stock Yards Bank had some time before—it does not appear definitely how or when—requested that it should be notified by telegraph of the failure to pay any draft on presentation; and Caldwell had standing orders from the managing officers of the appellant bank to do this in every case. As to this draft, however, he omitted it. The omission was entirely unintentional, a simple matter of forgetfulness on his part. (Record, pp. 125, 138.) No other officer of the bank had any idea of such an omission. (Record, pp. 125, 126, 218–19, 237.) The only one of them who had taken any notice of the draft at all that day was the assistant-cashier and notary, and he only for the purpose of comparing its amount with that stated in the letter enclosing it, without talking any notice of the names of the parties. (Record, pp. 132–3, 138, 189, 191, 244, 236, 237.)

sas City Stock Yards Bank to the appellant bank for collection, and was received by the appellant, in the same letter with six other drafts on divers persons, on Friday the second day of October. (Record, pp. 84–5.) This was in accordance with the regular course of the mails, letters from Kansas City being received at the Union Stock Yards the second day after mailing. (Record, pp. 190, 202–3, 204, 238.) It was, in accordance with the usual course of business, turned over to Caldwell, the collection teller, who sent it out with the other paper to be collected that day, by the usual messenger. (Record, pp. 123–4.) The messenger usually got to the offices of the commission merchants at a time when the proper person to pay or reject a draft was out for lunch; accordingly his custom was to leave the paper at the drawee's office, whereupon the drawee would pay or return it when the proper person came back from lunch. (Record, pp. 124, 193.) In accordance with this practice, the draft in question was left at Rappal, Sons & Co.'s office. (Record, p. 124.) The same afternoon, shortly before the bank closed, F. J. Rappal, Jr., brought back the draft, saying (as Caldwell testifies) that it would be paid in the morning, or (as he himself testifies) that they would not pay it that day, words which would very naturally be understood as Caldwell testifies. (Record, pp. 124, 283.) Caldwell thereupon handed the draft over to Jameson, the assistant cashier, who was also the notary who protested the unpaid paper, (Record, p. 125), and Jameson protested it the same evening. (Record, p. 190.) Notice was sent the same evening to the Kansas City bank in the following way: The collection teller had, in accordance with the regular practice of the bank, written a letter to the Kansas City bank, before sending out the

drafts, acknowledging the receipt and reporting the collection of them, specifying each. This letter had been signed by the cashier and returned to the collection teller (Record, pp. 192–3). On the return of the draft on Rappal, the collection teller (according to the custom in such case) drew a line through the mention of that draft in the letter, and corrected the footing of the list accordingly, thus indicating that the draft had not been paid. The cashier knew nothing of this. (Record, p. 193.) The letter, as thus amended, was mailed to the Kansas City bank the same evening (Record, p. 125); and the cashier of the Kansas City bank admits that it amounted to notice of the non-payment of the draft. (Record, p. 326.)

This was all that, according to the ordinary course of business, and the obligations imposed by law upon a bank undertaking collections, should have been done that day. But the Kansas City Stock Yards Bank had some time before—it does not appear definitely how or when—requested that it should be notified by telegraph of the failure to pay any draft on presentation; and Caldwell had standing orders from the managing officers of the appellant bank to do this in every case. As to this draft, however, he omitted it. The omission was entirely unintentional, a simple matter of forgetfulness on his part. (Record, pp. 125, 138.) No other officer of the bank had any idea of such an omission. (Record, pp. 125, 126, 218–19, 237.) The only one of them who had taken any notice of the draft at all that day was the assistant-cashier and notary, and he only for the purpose of comparing its amount with that stated in the letter enclosing it, without talking any notice of the names of the parties. (Record, pp. 132–3, 138, 189, 191, 244, 236, 237.)

Next morning, Saturday the 3d, Conrad, the cashier, became aware that the telegram had not been sent, by means of receiving a dispatch from the Kansas City bank directing the disposition of money which was not found to be to its credit. This led him to inquire of Caldwell if there was any paper from that bank that had not been collected. Caldwell showed him the draft in question; and on farther inquiry from Caldwell (whose recollection as to whether he had telegraphed or not was not positive) and at the telegraph office, he ascertained the neglect. Thereupon he himself telegraphed to the Kansas City bank that the draft had not been paid. (Record, pp. 236–7.)

When Conrad first testified on this point, his recollection was not quite clear whether this was done on Saturday the 3d or on Monday the 5th; but the file of the Western Union Telegraph Co. and the dispatch itself as presented to the Kansas City bank, make it plain that it was on Saturday. The Kansas City bank's press copy of its own telegram by which Conrad was led to make the inquiry which first brought the draft in question to his notice, also corrects him as to the amount for which it directed remittance. This of course is not material to the present issue. He evidently confounded in his recollection the dispatch asking a remittance of $2,500 to the Commercial National Bank, in answer to which he telegraphed the information that the draft on Rappals had not been paid, with a later one dated the same day (and probably not received at the Union Stock Yards Bank till Monday the 5th) asking him to remit the sum first named and $15,000 more as soon as funds should be received. (Record, pp. 89, 309, 310—as explained on pp. 320–321 311.)

The notice of protest was mailed in due course to the Kansas City bank on the 3d; Jameson, the assistant cashier and notary having first inquired at Rappal, Sons & Co's. that morning if they were going to pay the draft, and having been answered by F. J. Rappal, Jr., that they were not. (Record, pp. 190, 283.) No explanation was given by Rappal, or asked of him. (Record, p. 283.)

In all this there was nothing out of the regular course of business, except the collection teller's purely accidental omission to telegraph the Kansas City bank on the 2d, which was rectified next morning as soon as his superiors had any knowledge of it. (Record, pp. 194, 220, 239.)

There was nothing whatever in the facts which we have detailed, to suggest to the managers of the appellant bank any suspicion of the integrity or financial soundness of the Rappals. It should be borne in mind that the bank was receiving for collection ordinarily not less than a hundred and fifty notes and sight drafts a day. (Record, pp. 195, 244.) It received such paper for collection every day from the Kansas City bank, the daily amount varying, according to the state of business, from a few dollars to $40,000 or $50,000. (Record, pp. 40, 189, 170.) Drafts of even a much larger amount than $6,200 are not at all uncommon in the cattle trade. (Record, p. 245.) The letter of the Kansas City bank which enclosed the draft in question contained another of over $7,000, and three of $1,000 each. (Record, p. 85.) Moreover, it is not an uncommon thing for a commission merchant to defer deciding whether he will pay a draft or not. About half the consignors of cattle draw on the consignee when they ship the cattle.

The draft naturally arrives before the cattle do, and the drawee very often defers payment until the cattle shall have arrived and he has had opportunity to inspect them. (Record, pp. 102, 126, 195.) Neither is it uncommon for a perfectly solvent drawee to refuse altogether to pay the draft. There may be some dispute between him and the drawer, a mistake may have been made in the draft, or the cattle, on arrival, may be found of value insufficient to warrant so large a draft. All these, of course, are matters with which the bank receiving the paper for collection has nothing to do. (Record, pp. 45, 195, 225.)

And in fact nobody connected with the appellant bank actually did attach any importance either to the intimation of Rappal, Sons & Co. that they would defer payment till the day following, or to their final refusal to pay (Record, pp. 194, 201, 214, 233); and but for the accident of the omission to telegraph, neither the president nor the cashier would have known of the matter at all. (Record, pp. 193, 224, 237.) There was in their minds no connection between the complainants and the Rappals. Complainants were frequently drawing on other commission firms. (Record, p. 242.) And Rappal, Sons & Co. were receiving consignments of cattle from many others than the complainants, and (it is reasonable to presume) were being drawn upon on account of those consignments. (Record, p. 299.) There was thus nothing whatever to excite the suspicion of the officers of the appellant bank or to direct their attention to the finances of Rappal, Sons & Co. at the time when, on Saturday, October 3, they made the deposits counterbalancing their last debit balance of over $18,000.

The course of business between the commission firms

at the Stock Yards and those who forwarded cattle to them was such that "the failure or refusal of Rappal, Sons & Co. to pay the first draft," which the learned Circuit Judge says "was notice to the bank that this firm was probably behind with some shipper," (Record, p. 27) made it, on the contrary, at least as probable that some shipper was behind with this firm—which (as we have already shown) was the fact in this particular case.

The collection department of the bank's business was that to which the managing officers, the president and cashier, had least need to give their personal attention. It called for no exercise of discretion. Punctuality in making demand and report according to a prescribed routine was about all that it required. Hence the president and cashier occupied themselves, and properly, with other departments whose work called for the exercise of a choice guided by judgment. The business of collecting, protesting and notifying they very properly left in its practical details to subordinates of experience and approved fidelity. (Record, pp. 223-138.) They themselves had no occasion to know and, except in the most general and cursory manner, did not know who was being drawn upon, by whom, nor to what extent. Nor had any officer or employee notice of the particular ground for any draft; neither had they the means, nor were they charged with the duty or clothed with the right, of judging whether or not any particular draft was made with good reason and ought to be paid.

To meddle with that question would have been an impertinent deviation from their proper business; and their proper business could not but have suffered had they di-

verted themselves to such investigations. The president of the appellant bank not only states the fact, but also suggests the only expedient or safe rule, when he says that the bank does not undertake, and is not able, to connect any particular draft with any particular shipment or the proceeds of any particular sale. (Record, p. 103.)

The learned Circuit Judge, however, in assigning his reasons for the decree which he has deemed it proper to make, finds that the officers of the appellant bank as soon as payment of this first draft was refused, instituted a general inquest not only into the Rappals' right to refuse payment, and into all the circumstances of the consignment of the cattle against which he makes them assume the draft to have been drawn, but also into the ownership of all the money which Rappals had lately received or could be supposed to have lately received. He says (Record, p. 27):

> Rappal, Sons & Co. being indebted to the bank for overdrafts and on past due notes at the time the first draft was presented and protested for non-payment, it is safe to assume that the officers of the bank then did what business men would be expected to do under such circumstances. How natural that they should then say to Rappal, Sons & Co., 'We want to know what this means. You are indebted to us. Explain this thing. Who shipped the cattle against which this draft was drawn? Under what circumstances were they shipped to you? Is this your money, or is it the money of some one else?'

This assumption of the learned Judge squarely contradicts all the evidence not only of what was actually done, but of the whole course and usage of business in the bank and in the immense business of the Stock Yards in general—a business so great that the receipts and payments

of this one bank amounted to a million of dollars a day. (Record, p. 200.) And this evidence is very largely that of the officers of the appellant bank, to which the learned Judge says he has given credit. (Record, p. 28.)

The learned Judge goes on further to contradict this evidence to which he says he has given credit, (Record, p. 28):

> In view of Rappal, Sons & Co.'s indebtedness to the bank here, it is significant (to say the least) that it delayed for 24 hours or more to notify the bank at Kansas City, which had discounted the first draft and sent it to the bank here for collection, that the draft had been protested for non-payment.

Many of the inaccuracies of this statement are doubtless the result of mere inadvertence. Thus the learned judge would, we suppose, readily admit, if his attention were called to the matter, that it was some time in the afternoon of Friday, the 2d, that (in accordance with the regular course of this department of its business), the appellant bank first learned that the draft would not be paid that day, being, at the same time, given to understand, if not expressly assured, that it would be paid the day following. We suppose he would also admit that *the same afternoon* a letter was mailed to the Kansas City bank from which it could not help inferring that the draft had been received and that it had not been paid. He would also probably admit that the *protesting* for non-payment, which was, of course, as obligatory in the case of mere delay as in that of absolute refusal to pay, was not done until the evening of the same day, after the bank had closed; that this was entirely in accordance with the regular practice of the bank in all cases; and that it was equally in accordance with that practice that

the sending of the notices of protest did not take place until the mails were sent out from the bank the following afternoon.

A comparison of the whole testimony further shows that there is no reason to surmise, as the learned judge appears to, that the extraordinary telegraphic notice which, in accordance with a standing request of the Kansas City bank, it had been customary to send to that bank in such cases, may have been delayed more than twenty-four hours. It was undoubtedly sent on the forenoon of Saturday, the 3d, as soon as the cashier had learned of its omission the day before, and was received at the Kansas City Stock Yards at 2:30 P. M. (Record, pp. 236–7, 310.) The delay in sending it was, therefore, less than twenty-four hours.

The vital error, however, in this generally inaccurate statement of the learned Judge is in the assertion that the purely accidental delay in telegraphing, of which nobody had any suspicion until the following morning, when it was promptly rectified, "is significant, to say the least." And the learned Judge makes this injurious imputation at the same time that he says (Record, p. 28) he has given credit to the testimony of the president and cashier of the appellant bank, who both declare explicitly that the delay had no significance whatever.

The key to this self-contradiction in the mind of the learned Circuit Judge is obvious to any one who observed what took place at the hearing of the cause before him, and will be obvious to the reader of his opinion as soon as it is suggested, from the perfectness with which it fits into the inaccuracies and self-contradictions of that opinion.

The simple fact of this delay in telegraphing, made the most of as of course it was, by complainants' counsel, intensely impressed on the mind of the learned judge a suspicion of fraud, and the impression remained and controlled his disposition of the whole case, even after his reason had been constrained to yield to the conclusive evidence to the contrary. This explains why he has ignored the law as repeatedly and emphatically declared by this court, has disregarded the evidence whose truthfulness he admits and has founded his decision on what he has deemed it "safe to assume" in contradiction of that evidence.

Saying this involves no disrespect to the learned Judge. It will be in the recollection of the court that Lord Campbell, in his Lives of the Chief Justices, ranks Lord Tenterden with the greatest of English judges, and deems the King's Bench to have attained its highest perfection as an instrument of justice in the days when Lord Tenterden presided there. At the same time it is Lord Campbell who makes the following observations, which will be seen to have a twofold pertinence in their application to the present case: (4, Campbell's Lives of the Chief Justices, Chap. LIII., p. 315 of Boston Edition.)

The bias which chiefly carried Abbott's mind astray when it missed the object to which it was directed, was a suspicion of fraud. He had a very indifferent opinion of human nature, and at times he seemed to believe all mankind to be rascals. He delighted in discovering what he considered a fraudulent contrivance on the part of the plaintiff or of the defendant and in unraveling it. I have heard Scarlett jocularly boast that he got many a verdict by humoring this propensity—'just giving the hint very remotely to the Chief Justice, and allowing his lordship all the pleasure and the *eclat* of exposing and reprobating the cheat.' This dexterous advocate cer-

tainly did at last prevail upon him to lay down a rule which, while it was acted upon, materially obstructed the transfer of negotiable securities; that 'where a bill of exchange has been lost or stolen, a subsequent holder, although he has given a valuable consideration for it, cannot maintain an action upon it if the jury should think that he took it *under circumstances which ought to have excited the suspicion of a prudent and careful man.*' The rule before having been that the title of the holder for value could only be impeached by proof of fraud. • • • (p. 316.) This rule of 'circumstances to excite the suspicion of a prudent and careful man' • • • died with its author.

One might almost think that, in making these remarks, Lord Campbell had had in view the decision from which we are now appealing. And however this "infirmity of noble minds" may command our respect, we have a right to ask that it shall not be allowed such operation as to plunder this appellant for the satisfaction of a fraudulent claim. To this end we invoke the balanced judgment of this court.

The learned Circuit Judge makes a serious mistake in saying, as he does in substance (Record, p. 27), that for *all* the cattle they sold, Rappal, Sons & Co. received from the purchasers, instead of checks, the tickets or memoranda of sale furnished by the Stock Yards Company and bearing the purchaser's order for payment, and that they deposited these in the appellant bank. The fact is, that of the seven deposits made by Rappal, Sons & Co. during the time of the sales in question, viz.: on the 2d, 3d, 5th and 6th of October, amounting to more than

$46,000—four of them, between $29,000 and $30,000, having relation to these sales—only two, amounting in round numbers to $20,500, were of the kind supposed, the rest being of ordinary checks or currency. Only two of the several houses to which the sales were made, made a practice of paying by duplicate sale tickets. (Record, pp. 35, 36, 74, 97, 56, 57, 58, 59.)

The tickets in question contained nothing whatever to indicate who owned the cattle, nor who had sent them. (Record, p. 121.) They gave notice of nothing more than that Rappal, Sons & Co. had made two cash sales of cattle. As it was well understood that they were constantly making such sales, that their business consisted in making such sales, these tickets to which the learned Circuit Judge attaches so much importance, even if their amount had been as great as he erroneously supposes, were evidently of no significance whatever. It appears in evidence that the whole $46,000 of deposits made on the four days in question were proceeds of live stock sold on commission. (Record, p. 114.) The two deposits which were made in the form of sale tickets were both made on Saturday, the 3d of October, before anything had occurred to call the attention of the managers of the bank to Rappal, Sons & Co.'s finances. (Record, pp. 58–9.)

The method of this use of sale tickets is explained in the testimony of Edward Morris. (Record, pp. 120 & 121.) It was obviously nothing more than a device to enable the buyer to make all of a day's payments at any one bank by a single check instead of many. And, as obviously, the exchanging of the tickets, after they had been deposited, for a check of the same person for the aggregate amount, was a mere matter of routine which

would not come under the notice of the discretionary officers of the bank unless the receiving teller or collection clerk should in some special case call their attention to it. And there was nothing about the deposit in question in the least out of the ordinary course or such as to suggest any duty in either of those ministerial employees to call the attention of the president or cashier to it. There is, therefore, no reason for charging the bank with notice not merely of the fact that the deposit was made as it was, but of other supposed facts which might, perhaps, have been discovered by inquiry based on it.

Even if the sale tickets referred to ever came under the eyes of any of the managing officers of the appellant bank, having but a day or two before allowed Rappal, Sons & Co. to overdraw their account in order to make advances on cattle (Record p. 236), those managing officers would naturally and reasonably presume that the cattle mentioned in the tickets were wholly or in part the same which the bank had previously advanced the money to pay for.

The rule imposed upon the appellant bank by the learned Circuit Judge amounts to this: That a bank whose customers are largely engaged in selling cattle on commission, is bound to inquire into the source from which every such customer who may be indebted to it—as a very large proportion of them frequently are (Record, pp. 213, 216, 233)—gets the money which he deposits, and into the rightfulness of the disposition which he makes of it, on penalty of being held to make good all demands which, without reference to any particular fund or allegation of any ground, anybody may choose to

make against that customer, and may at any time afterwards succeed in establishing. It must hold all the money deposited by such a customer until it shall have decided, at its own peril, that every payment he proposes to make out of it is made to the person to whom that particular part of that fund ought to go.

It is evident that if the managers of a bank were to attempt such a paternal supervision of the affairs of their customers, they would soon find that they had no time to attend to their legitimate business. And on the other hand, customers would not, except under extreme necessity, tolerate such meddling in matters which they have a right to decide for themselves under the control of the law alone; but would exercise their utmost ingenuity to devise some other agency for keeping and transferring their money and obtaining their loans. In other words, the rule would operate in two independent ways to break up altogether the business of banking.

During the period beginning with the 1st and ending with the 6th of October, the appellant bank, besides counterbalancing the charge against Rappal, Sons & Co. on account of their overdrafts, paid twenty-seven of their checks (other than those drawn in favor of the bank itself) amounting in all to more than $32,000. (Record pp. 112–13.) There is no reason why it should not be as much bound to inquire into the rightfulness of paying out the money on these checks as into the rightfulness of appropriating the money to make good the overdrafts. The question is the same in each case: Is the holder of money to be presumed to have the right to dispose of it as he deems proper, or is the bank with which he may

have deposited it bound to investigate and determine his title to it whenever anybody, without proof or allegation of ground, asserts that the depositor owes him? Or is it the duty of a bank to lend its money and then be vigilant to secure to all other creditors of the borrower a preference over itself?

Of not quite $7,000 of checks drawn during the same period to the order of the appellant bank and credited by it, one for $3,713.78 drawn October 1, was evidently given in payment of one of complainants' drafts. It corresponds exactly in amount with the draft announced in complainants' statement of September 29. (Record, pp. 452-3.) Frederick J. Rappal Jr. testifies that they paid for the Bowen cattle which were sold October 1, and whose gross proceeds, $3,898.53, constituted part of their deposit that day. (Record, p. 114.) Substantially all the residue of those checks were given towards payment of the overdue note of Rappal, Sons & Co., which was held by the appellant bank.

XIII.

In view of the frequency, which has already been pointed out, of premature or questionable drafts on commission merchants at the Stock Yards, and of the refusal of such drafts without any effect on the solvency or credit of the drawees, there would be no ground for censuring the managers of the appellant bank if they had allowed the refusal of the complainants' second and third

drafts on the Rappals to pass without question. (Record, p. 225.) But the fact is that, immediately on learning from Mr. Conrad, the cashier, that one of the Rappals had told him they did not mean to pay the $19,000 draft which came to the bank Monday morning, the 5th—after the overdrafts had been made good by the deposits of Saturday, the 3d—Mr. Washburn sought and had an interview with the younger Rappals (Record, pp. 214 & 215, 229 & 230, 282–3, 293–4), who at that time were in charge of the business, and obtained from them a statement of their financial condition, in which he learned that this $19,000 draft and the other draft which came later on the same day, were for the account of Bowen & Co., and that Bowen & Co. were already indebted to Rappals for more than the amount of the drafts. (Record, pp. 220–1.) F. J. Rappal, Jr., had already made substantially the same explanation to the cashier. (Record, p. 282.)

Mr. Washburn had been acquainted with the elder Rappal for many years, and with the sons during the three years (Record, p. 105) that they had been in business at the Stock Yards; and the acquaintance had inspired him with confidence in them. (Record, p. 212.) He therefore did not doubt the truth of their statements with regard to these drafts. And, as we have already seen, the statements were true. (See *ante*, pp. 40—45, 47—62 of this Argument.)

It was not until the next, or more probably the second, following day that the first vague intimation of a claim on the part of the complainants to the cattle whose proceeds the Rappals had been depositing, was brought by Thomas Gillespie to the notice of the appellant bank. (Record, p. 216.) Before that intima-

tion was received, the transaction with the Rappals was already closed. (Record, pp. 216 & 217.) The complainants have made no attempt to show that that intimation was given earlier than the 7th, nor what its terms were, although the person who gave it was one of themselves, and although his testimony has been taken on other things which occurred at the same time. (Record, p. 146.) Can there be any practical doubt, in view of these circumstances, but that it was first given on the 7th, and that its terms were too vague to constitute any notice?

We confidently submit therefore that even if the learned Circuit Judge were right in finding that a thorough investigation would have shown a right in complainants as against Rappal, Sons & Co., to the proceeds of the cattle in question, he is nevertheless entirely mistaken in supposing that there was anything in the circumstances to demand or suggest any such investigation on the part of the appellant bank,—certainly no investigation beyond what was actually made.

XIV.

Apart from the imputation of bad faith, which the opinion of the learned Circuit Judge both intimates and disavows, there is nothing in the delay to give telegraphic notice of the non-payment of complainants' first draft, on which the complainants can base any claim.

1. The appellant owed no duty of that kind to

them or to any agent of theirs. If it owed any such duty at all, it was to the Kansas City bank alone, which was the owner of the draft in question. As to the other two drafts, Connelly, assistant cashier of the Kansas City bank, testifies that his bank did not receive them for collection, but discounted them. (Record, pp. 167, 168.) And A. J. Gillespie says of the second, the $19,000 draft: "We sold it as exchange to the bank." (Record, p. 182.) There is no indication that the first draft, that for $6,200, was dealt with in any other way; and it appears expressly that when it was returned protested, the complainants gave the bank their check for it as they subsequently did in the other two instances; which would have been unnecessary had the draft been merely taken by the bank for collection. (Record, pp. 167, 168, 169.) Hence in forwarding the draft to the appellant bank for collection, the Kansas City bank was acting on its own account and not for complainants; and the duty, if any there was, of telegraphing to the Kansas City bank with regard to the draft was one which complainants had no right to require, neither can they hold the appellant bank liable for any supposed breach of it. "Negligence which consists merely in the breach of a contract will not afford ground for an action by any one who is not a party to the contract nor a person for whose benefit the contract was avowedly made." [Shearman & Redfield on Negligence, p. 68, § 54.]

2. Even to the Kansas City bank, there is no evidence that the appellant owed any such duty, except that the former had at some time and in some way requested it, and that it had ordinarily been done. (Record, pp. 169–70.) There is no evidence whatever that the appellant bank had ever promised to do it. And the testimony of Mr. Washburn (Record, pp. 223–4), shows that

he did not understand that it was under any positive obligation to do it. In the absence of such promise, the fact of having done it in former instances could not impose any obligation to continue doing it, of which advantage could be taken in case of a merely accidental omission, such as the one in question undoubtedly was.

3. Even if we were to suppose that there had been a promise, there is no evidence nor any probability that any consideration was given for such promise, beyond the ordinary fees for collection or protest. Telegraphic notice was given the Kansas City bank of the non-payment of each of the three drafts in controversy. But in the letters subsequently returning these drafts, request was made for the remittance of protest fees and for nothing more; and protest fees and nothing more were in response remitted by the Kansas City bank. (Record, pp. 316, 317.) Therefore no compensation was given for the service of making the telegraphic report.

Certainly to give notice by telegraph of non-payment is no part of the regular duty of the bank or notary receiving paper for collection. And an agreement to perform this additional service without additional compensation, could bind, at most, to nothing more than ordinary diligence.

A tribunal of the very highest authority has decided, in a case very elaborately argued, that for the non-performance of a duty gratuitously undertaken, no compensation can be claimed. In the case of *D. Thorne and W. Thorne* v. *Deas*, 4 Johnson, 84, the plaintiffs copartners in trade owned half of a ship, and Deas owned the other half. Deas positively and emphatically promised, first one plaintiff, and afterwards the other, that he would see to getting the vessel insured. He, however, did nothing

about it, and the vessel was lost. The New York Supreme Court held, Chief Justice Kent delivering the opinion that, the promise being perfectly gratuitous, no action would lie for the non-feasance. The Chief Justice says (p. *97):

A short review of the leading cases will show that, by the common law, a mandatary, or one who undertakes to do an act for another without reward, is not answerable for omitting to do the act, and is only responsible when he attempts to do it and does it amiss. In other words, he is reponsible for a misfeasance, but not for a non-feasance, even though special damages are averred.

The rule as to misfeasance is thus laid down in 1 Smith's Leading Cases, *295:

It is plain that an unpaid agent is liable for *gross negligence*, and equally plain that he is liable for nothing less. From the latter of these propositions there is, however, as has been already stated, one exception, and it is contained in the following words of Lord Loughborough: * * * 'If a man gratuitously undertakes to do a thing to the best of his skill, *when his situation or profession is such as to imply skill*, an omission of that skill is imputable to him as *gross negligence*.' * * * It perhaps may be more correct to call this a distinction engrafted on the general doctrine than an exception from it; since it does not render any unpaid agent liable for less than gross negligence, but renders that gross negligence in some agents which would not be so in others.

The rule is thus stated in Shearman & Redfield on Negligence, § 17, p. 22:

It can never be reasonable to require precisely the same degree of care from a gratuitous employee as from a hired one.

§ 22, p. 26: If one does an act of pure favor for another, with the assent of the latter, his responsibility to him is reduced to the duty of merely slight care and diligence.

Ordinary diligence was abundantly rendered by the appellant in imposing the duty upon an employee whose competence and faithfulness are evident from the fact that no instance of failure ever occurred until the one now in question. (Record, pp. 169-70.) It would be absurd to require that the president or cashier of a bank receiving more than a hundred drafts a day, and that department being nevertheless comparatively a small one in its business (Record, p. 96), to give their personal service to a detail of this kind. That they did exercise a vigilant supervision over the performance of the service is manifest from the omission being detected and rectified before twenty-four hours had elapsed.

The reason which justifies imputing to a bank the negligence of subordinates and even strangers in regard to those legal duties of a collecting agent, the performance of which is essential to save the rights of the holder, evidently does not exist in regard to an unnecessary and gratuitously undertaken addition to those duties. In the one case the service *must be performed;* in the other, reason can ask no more than the adoption of such ordinary means as may reasonably be expected to prove effectual. The case, even if it be not held a proper one for the application of the rule laid down in *Thorne* v. *Deas*, will certainly not justify anything more strict than that which Mr. Justice Buller propounded in *Smith* v. *Cologan*, 2 T. R., 188 (note), where he held that if a merchant who has received and accepted from his correspondent orders to effect insurance on a cargo, "do what is usual to get the insurance made, that is sufficient; because he is no insurer and is not obliged to get insurance at all events."

4. Moreover, it is not at all clear that the neglect, whether tortious or not, really injured anybody.

There is no pretense that the telegraphic notice could have been given in time to prevent Rappal, Sons & Co. appropriating the proceeds of the cattle for whose cost that draft was drawn. But complainants do pretend that if the non-payment of the first draft had been telegraphed to the Kansas City bank, and if that bank had promptly made it known to them, they could and would have prevented the Rappals from getting possession of the second of the consignments in question, that of the 815 head of cattle, for whose cost the $19,000 draft was drawn. This assumption is, to say the least, extremely improbable. No doubt, if they had been able to move in time before the Rappals had succeeded in disposing of the cattle, and had been able and willing to indemnify sureties at Chicago on a bond of forty thousand dollars, they might, just as anybody else might who chose to assert a claim, have sued out a writ of replevin and got possession of the cattle. But there is no evidence that they could, and no probability that they would, have taken any such heroic measures, particularly in view of the fact that the mere neglect to pay immediately did not to any one acquainted, as complainants must have been, with the course of business at the Stock Yards, raise even a probability of ultimate failure (Record, pp. 126, 195); besides that they appear to have relied on the credit and resources of the elder Rappal to make them whole in these transactions, as appears by their taking a note and a new draft from him when they learned of the refusal of the two other drafts. (Record, p. 181.) And they do not profess to have contemplated any such hazardous and expensive steps. What they allege is that, by simply tele-

graphing to the Union Stock Yards Company at any time before the 815 head of cattle had been actually delivered to Rappal, Sons & Co., they could have prevented such delivery. (Record, pp. 161, 179.)

For this assertion there is no support whatever. And the positive evidence strongly contradicts it.

It should be borne in mind that the original bills of lading did not name complainants at all, but specified the Hanford Cattle Co. or Quinlan, Montgomery & Co. as the consignees. These consignees, by order on a separate paper, had directed delivery to complainants, and complainants had by endorsement of this paper, directed delivery to Rappal, Sons & Co., and had sent to them the order thus endorsed. (Record, pp. 70, 73, 277.) Obviously, the Union Stock Yards Company would have assumed a great risk had they, on the mere word of complainants, withheld from Rappal, Sons & Co. the cattle to which they held a title of the same nature and, to all appearance, precisely the same degree of validity as the complainants themselves. And the testimony of Williams, the superintendent of the Stock Yards, is express that, even if they had received a prohibitory telegram from complainants, the company would nevertheless have delivered the cattle to Rappal, Sons & Co. on presentation of the orders which they held, unless the transporting railroad company, to which in the regular course of business the Stock Yards Company was almost always largely in debt, and against which it had therefore the ability to recoup itself if held liable for damages, should expressly request it not to deliver. (Record, pp. 205-210.) That the railroad company would have made such

a request, and thus taken upon itself the liability which the Stock Yards Company prudently declined, nobody asserts, and there is no reason to believe. In fact Williams expressly says they do not usually do it. (Record, p. 206.) It is especially improbable in view of the ability of Rappal, Sons & Co. to present not only the orders for the delivery of the cattle, but also the sale tickets showing that the purchase was made not by complainants, but by Bowen & Co., and thus that complainants had probably no right in the cattle. (Record, pp. 149, 284, 285.) The tickets appear on pp. 457–463.

Moreover, it is at least doubtful whether, in case the telegram had been sent as soon as practicable, complainants would have had the information in time to have given the Union Stock Yards Company the telegraphic prohibition which they say they would have sent, before the actual delivery of the cattle to Rappal, Sons & Co. The telegraphic notice of non-payment was in fact sent some time during the forenoon of Saturday, October 3d. (Record, pp. 236, 237.) And it did not reach the telegraph office at the Kansas City Stock Yards until 2:30 P. M., which must have been, at best, but a short time before the Kansas City bank closed. (Record, p. 310.) If it had been sent, according to the usual custom, on Friday the 2d, it could not have gone out until late in the afternoon, inasmuch as, in accordance with the regular practice, the draft had been left for consideration at Rappal, Sons & Co.'s office, during the noon intermission, and it was not until nearly 3 o'clock P. M. that Frederick J. Rappal, Jr., brought it back and gave the first information that it would not be paid that day. (Record, pp. 123–4, 283.) The pay-

ment or refusal of the drafts sent out during the day for collection continued ordinarily until 3 P. M., and it was not until about 3:30 that the collection teller compared his lists with the checks and drafts returned to him, summed up what had been paid and what had not, and corrected accordingly the letters of acknowledgment which had been already signed by the cashier. (Record, p. 193.) Thus it was not usual for the telegraphic reports to be sent to the Kansas City bank until late in the afternoon. (Record, p. 41) Unless the dispatch thus sent had been forwarded much more expeditiously than that which was sent the following morning, it could not have reached the Kansas City bank before that bank would have been closed for the day, and complainants would not have known of it until ordinary business hours the next morning, and would have had little chance of getting word to the Union Stock Yards until well on towards noon. But Rappals received the cattle, sold them, and had the proceeds deposited in the Union Stock Yards Bank (Record, pp. 57-8) all before 1 P. M. of that day, Saturday, the 3d—the bank closing at 1 on Saturdays. (Record, pp. 100, 135.) Quite early hours are kept in the cattle trade at the Stock Yards, and it is probable from all the circumstances that they at any rate received the cattle even before complainants would have learned the contents of a dispatch sent the previous afternoon.

Thomas Gillespie, who is as bold as his father in the incorrect assertion that the cattle in which complainants had transferred all their title to Rappal, Sons & Co., could have been recovered by a mere telegraphic message, does not pretend that this could have been done unless the dispatch had been sent before 6 P. M., of Friday. (Record, p. 161.) It is practically impossible

that the complainants could have received word in time for this.

Cashier Connelly, of the Kansas City bank, who is very explicit in his statement of what he would have done had he received the dispatch on Friday (Record, p. 175), has not a word to say about what he did when it actually did come. He cannot even tell when he received it. "I could not say, more than it shows itself." (Record, p. 166.) "I could not express an opinion as to that." (Record, p. 310.) It reached the telegraph office at the Kansas City Stock Yards at 2:30 P. M. on Saturday, and was found in the possession of the Kansas City bank when Mr. Connelly gave his testimony (Record, pp. 310, 166); but between those two points its history is a blank. As to when it was shown to complainants, the only evidence is the testimony of the elder Gillespie that he did not learn that the draft had gone to protest until Monday, the 5th. (Record, p. 179.) And for aught that appears, he may have derived his information solely from the return of the draft itself, with the certificate of protest, which arrived on that day by mail, as appears from the fact that Mr. Connelly on that day remitted the protest fees as requested in the letter accompanying the returned draft, having also on the same day obtained complainants' check for the amount of the draft and fees. (Record, pp. 167, 310, 316.)

Whether complainants ever saw or heard of this dispatch which was received at the telegraph office at the Kansas City Stock Yards at 2:30 P. M. on Saturday the 3d, there is nothing to indicate. On the whole, it seems probable that the messenger who brought that dispatch

to the bank, found it closed for the day, and that delivery was not made until Monday morning. Hence it is practically certain that if the same dispatch had come to Kansas City at a much later hour on Friday, as it necessarily would have done, the complainants at any rate would have known nothing of it until after the bank had opened Saturday morning,—too late to arrest the delivery of the second consignment of cattle, the 815 head, even if we admitted the elder Gillespie's baseless assumption.

What is absolutely certain is that this telegram did not produce any deep impression on the mind either of the complainants or of Mr. Connelly. Doubtless they were both as well aware of the incidents of business at the Union Stock Yards as the officers of the appellant bank, and attached no great importance to the mere omission to pay a single draft on the very day of presentation.

Connelly says positively that he had confidence in the financial responsibility of the elder Rappal, and complainants doubtless had a like confidence; the elder Gillespie having been acquainted with Rappal for twenty years. (Record, pp. 171, 173, 176.)

According to Mr. Connelly's own testimony, it was the refusal of the two later drafts, for $19,000 and $691, that surprised and alarmed him. (Record, p. 325.) He says nothing about any such effect of the first dispatch; the dishonoring of three successive drafts would of course put a different face on the matter. But there is no ground for any imputation of laches in giving notice as to the two latter of these. On the contrary, the notice was given with extraordinary promptness.

The Gillespies, too, though copious in their testimony to what they would have done had the delayed telegram reached them on Friday, have nothing to say about what they actually did in the direction of attempting to stop either of the two latter consignments of cattle. If the dispatch was communicated to them on Saturday, they had abundant opportunity to do everything with regard to the third consignment which they say they would have done with regard to the second. Part of this last consignment were not weighed out to Bowen & Co. until that day, and, of course, were not forwarded till then. This appears plainly by comparing the delivery orders dated October 3 (Record, p. 73), Gillespies' statement of the same date (Record, p. 456), and the sale tickets signed by the Kansas City weigh master (Record, pp. 460–463), which correspond in numbers and weights of cattle (one or two obvious clerical errors excepted) with the statement. If the 815 head of cattle which started on the 1st could have been stopped the evening of the 2d, as Thomas Gillespie alleges (Record, pp. 160, 161), or the morning of the 3d, as his father pretends (Record, p. 179), then certainly the 121 head which started on the 3d could have been stopped the same day.

Even if complainants did not get their information until Monday morning, it is remarkable that they did nothing towards arresting the delivery or even inquiring whether some one of a hundred possible contingencies had not delayed the arrival of at least a part of the cattle comprised in the three consignments. There is not the slightest indication that they did anything of the kind.

Neither is there the slightest reason to believe that they would have done anything of the kind if they had, *per impossibile*, got the dispatch Friday afternoon. The

delay in telegraphing, which has been so successfully used to impose upon the learned Circuit Judge, is utterly insignificant, not only in its origin, but in its effect.

3. There can be no question but the non-payment of the second draft, that for $19,000, was announced by telegraph more promptly than had been usual.

That draft came to the appellant bank in the first mail delivery of Monday, October 5th. (Record, pp. 127, 191.) Soon after the bank opened on that day, Frederick J. Rappal, Jr. came in and told the cashier that they were expecting a draft of $19,000 which they did not intend to pay. (Record, pp. 234, 282.) Mr. Conrad, the cashier, looked among the drafts which had been received that day, found the one in question, and caused the fact of non-payment to be telegraphed to the Kansas City bank immediately. (Record, p. 234.) The telegram was received at Kansas City at 2 P. M. (Record, p. 312.)

A futile attempt has been made to show that this second draft was received by the appellant bank on Saturday, the 3d. Charles Churchouse, who was at that time book-keeper for Rappal, Sons & Co. (Record, p. 74), but whose services had since been dispensed with, and who was then out of employment, out of money, and hoping that complainants would pay him something for his time (Record, p. 79), testifies positively that he remembered the two drafts dated respectively September 30 and October 1 being presented for payment at Rappals' office on that day. (Record, p. 75.) He does not remember the amount of either draft, nor to whom it was payable, nor the date on which any other particular draft

was presented between September 30 and October 10, (Record, pp. 75–6) "because," as he says, "drafts were constantly coming in." (Record, p. 78.) He remembers these two only because they were protested. Afterwards correcting himself, he says they were not protested at the time when he saw them (and he does not remember that he ever saw them again), but Mr. Rappal told him they were going to be. (Record, p. 77.)

In addition to this testimony of Churchouse, so strong on the particular point aimed at and so weak everywhere else, attempt is made to draw a like inference from the fact that complainants gave the Kansas City bank on Tuesday the 6th their check for the amount of this second draft. (Record, p. 168.) Louis Gillespie and a brother who was not a member of the firm, the latter having drawn the check and the former having signed it, both testify with a positiveness all but equal to that of Churchouse that they received back the draft at the same time that the check was given. (Record, pp. 327–8, 188.) If the draft had not been protested until the 5th, it could not have reached the Kansas City bank during the business hours of the 6th, inasmuch as the first mail leaving Chicago after noon on the 5th would not reach Kansas City until after 6 P. M., of the 6th. (Record, p. 203.) Hence the inference is that it must have been protested on the 3d.

Apart from the clear testimony of the cashier, assistant cashier and collection teller of the appellant bank, and the evidence of the certificate of protest, that the draft was received and protested on the 5th, the story of

Churchouse and the two Gillespies is simply impossible. The draft in question is dated October 1, but it was not written until October 2, taking the place of a draft which had been discounted the previous day but was found, when on the point of being mailed, not to express the right amount. (Record, p. 175.) Of course it was not mailed until the 2d. (Record, pp. 167–8.) The post-office employees having charge of the matter at Chicago and at the Union Stock Yards testify that the earliest mail that could take it left Kansas City between 6 and 7 in the evening, reaching the Chicago post office about 3 P. M., of Saturday the 3d. (Record, pp. 202, 204.) The wagon taking this mail to the Union Stock Yards left the Chicago post office about 3:35 P. M., (Record, pp. 203, 204), and was due at the Stock Yards postoffice at 4:40 P. M., too late for the last delivery of that day to the Union Stock Yards bank, which was at 2:30 P. M. The mail must, therefore, have been held until the first delivery of Monday, the 5th, which was at 7:30 A. M. (Record, p. 231.)

Moreover, the check which complainants gave the Kansas City bank on the 6th was for the amount of the draft only, the protest fees not being included. Connelly, the assistant cashier of the bank, testifies that he would have had the amount of protest fees included if he had known what it was. (Record, pp. 324–5.) When the draft was returned, it was of course accompanied by the certificate of protest, which showed the amount of fees. (Record, p. 6.) The letter of the appellant bank, accompanying the returned draft, also stated the amount and asked for payment. (Record, p. 315.) It is evident

therefore, that Connelly, who, as he says, was surprised and alarmed by the telegraphic announcement of the non-payment of the $19,000 and $600 drafts (Record, p. 325), forthwith demanded reïmbursement from the Gillespies, without waiting for the drafts to come back, or for information of the amount of protest fees. The telegraphic correspondence of the 5th (Record, pp. 312, 313), suggests the inference that Gillespies at first demurred to making reïmbursement, and suggested that the draft was probably refused because it exceeded the amount for which the cattle could be sold, and that Rappals would probably be willing to pay the net proceeds. Connelly's dispatch requesting such payment was not received at the Chicago Stock Yards till after 3 P. M. (Record, p. 90.) When the answer of the Union Stock Yards Bank came back, showing that Rappals insisted on holding the proceeds, it was too late in the afternoon to carry the matter farther, if indeed the dispatch itself came to Connelly's hands before the next morning. It will be noticed that it was not received at the Kansas City telegraph office till close upon 4 P. M. (Record, p. 313.) But the next morning, the 6th, he renewed his demand upon the Gillespies and received the check.

The cogent inference from the correspondence and the amount of Gillespies' check, and the absolutely conclusive evidence involved in the course of the mails between Kansas City and the Union Stock Yards, thus confirm the accuracy of the testimony of the officers of the bank, and again illustrate how prone the testimony of the Gillespies is to be tinted by the object had in view.

6. That the third draft, for $691.70, dated October 3 (Saturday) was not received by the appellant bank until Monday, the 5th, and that notice of non-payment was promptly telegraphed to the Kansas City bank, is unquestioned. (Record, pp. 192, 90, 169.)

XV.

Complainants have taken some pains to bring out the fact that on the 20th of July, 1885, in response to a request from Mr. Connelly, the assistant cashier of the Kansas City bank, the appellant bank, through its cashier, had given a statement in general terms commendatory of the integrity and financial soundness of Rappal, Sons & Co. What bearing the fact can have on the decision of the present controversy, we do not quite understand. The learned Circuit Judge has made no allusion to it in his opinion.

This statement was not made to the complainants, nor with any expectation of its being communicated to them. Cashier Connelly, in asking for it, had said—"Will you kindly give me, *in confidence*, a statement," etc., etc. (Record, p. 84), which was a plain assurance that the information would not be communicated to anybody else. Mr. Connelly himself says that he did not procure it for complainants' benefit. (Record, p. 171.) And his showing the letter to the elder Gillespie some time after

he had received it, if not a breach of good faith, certainly laid no responsibilty on the appellant bank.

The letter is in no sort a guaranty. Mr. Connelly did not ask for a guaranty, there was no consideration for one and the terms of the letter import nothing of the kind. In it Mr. Conrad says (Record, p. 84):

> Rappal, Sons & Co. are a firm in good standing financially and otherwise; don't think they keep much ready money in the business, but F. J. Rappal owns a large farm near Joliet and is estimated worth $50,000 or $60,000. He is a man of high character, and has always had good credit, even before he had any means.

This letter, which was written more than two months before the transactions now in controversy, is evidently a mere statement of opinion, in part confident and in part manifestly conjectural. And it shows very plainly that, so far as the appellant bank knew, the pecuniary resources of the firm, directly or indirectly, were not adequate to any heavy venture or to a prolonged series of speculative operations.

It expresses exactly the opinion which the president of the bank afterwards avowed in his testimony. (Record, pp. 104, 212.) The testimony of the cashier is to the same effect. (Record, pp. 233–4.) And except that the money value of the elder Rappal's property may have been somewhat overestimated—it is expressly stated in the letter to be matter of estimate merely—the statement appears, by the testimony of the elder Rappal himself, to have been substantially correct. (Record, pp. 105–6.)

It should be noticed that Rappal's testimony relates to his financial condition on or about the 1st of October;

while the letter from the appellant bank was written the 20th of July. Between these two dates his means may have been somewhat reduced.

It should be further noticed that the inquiry and the answer both related to Rappal, Sons & Co., a partnership at the Union Stock Yards, whose sole business was selling live stock on commission, (Record, p. 295,) and not to any cattle-buying operations of the elder Frederick J. Rappal at Kansas City, whether individually or in joint venture with others resident in that region. The record may be searched from beginning to end, and not the slightest indication will be found that any officer of the appellant bank knew anything of the elder Rappal's ill-advised speculations in that western market.

Moreover, apart from the contested and, at best, extremely questionable claims of the complainants, there is no evidence that any one who dealt with that commission firm of Rappal, Sons & Co. ever lost a dollar by so doing. There is no question but that the whole series of consignments to which the three now in controversy belong brought into the hands of complainants from Rappal, Sons & Co. more money by $4,000 than the net proceeds which came to the Rappals. (Record, pp. 283, 175, 292-3.)

Whatever may have been the object of complainants' counsel in bringing out this letter of recommendation, the effect is to put in the clearest light not only the good

faith but also the substantial accuracy of the representations made by the appellant bank on the 20th of July, 1885.

The complainants against whom we appeal have come into a court of equity with a claim of which equity has no jurisdiction and which is, moreover, confessedly fictitious. Upon their own evidence, the most they can pretend is that by a search into the facts which they have falsified in their bill and done their best to disguise in their testimony, the court may be able to find some ground of equitable relief. If the court sees fit to make such a search it will find that, of all whom they have made defendants, they have a demand against the elder Rappal, not against his sons nor against the partnership of Rappal, Sons & Co. This demand they cannot make out of him, because of their own twofold negligence, first, in allowing him unwarned to carry on his speculative ventures in conjunction with Bowen and James to a loss beyond his resources, when they had undertaken the duty of keeping the accounts and had the means always in their hands of ascertaining the exact condition of the business; and, secondly, in lending the money for the purchase of the cattle now in controversy, without securing themselves upon the cattle by taking bills of lading and attaching them to their drafts. Their suit and their decree is simply that the penalty of their negligence shall be transferred to the appellant bank. The ground of fact for involving the

appellant bank is that it had permitted Rappal, Sons & Co. to overdraw their account for the purpose of making advances on cattle consigned to them—which advances in great part at any rate, went into complainants' pockets,—and with the understanding that the balance should be redressed out of the proceeds of the cattle when sold, and then, without suspicion of any claim on behalf of the complainants, permitted Rappal, Sons & Co. to deposit enough to make their account good; and that it had in like manner loaned them money upon their note for the purposes of their business, and then procured a partial payment out of money which the Rappals, without contradiction direct or indirect, assured it was their own. Add to this that a clerk of the appellant bank, through mere forgetfulness, failed to telegraph to the bank which had purchased one of complainants' drafts on Rappal, Sons & Co., the information that it had not been paid, the appellant's cashier not learning of the negligence till next morning and then remedying it at once,—an accident which had not the slightest effect on any interest of complainants, and related to a matter about which they had nothing to say. Add also—what we should not have thought worth adding had we not been taught better by the learned judge from whose decision we appeal—that a part of the deposits which made good Rappal, Sons & Co.'s overdrafts, were in a form indicating that they were derived from sales of cattle, but not at all whose the cattle were; and we have the entire body of fact upon which it seems to have been thought a claim could be founded against the Union Stock Yards National Bank.

We respectfully submit that the facts and the claim have nothing to do with each other.

EDWARD O. BROWN,

Counsel for Appellant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1890.

No. 79.

THE UNION STOCK YARDS NATIONAL BANK, *Appellant*,
vs.
A. J. GILLESPIE ET AL., *Appellees*.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

OBJECTIONS TO MOTION OF APPELLEE FOR A MANDATE.

Counsel for appellant, The Union Stock Yards National Bank of Chicago, objects to the allowance of a motion for a mandate in said cause. He has received notice from counsel for appellees of an intention to make a motion for the issuance of said mandate upon Monday, January 5th. There is no necessity for any extraordinary haste.

A petition for rehearing was immediately prepared after the opinion of the court was received by appellant's counsel. It was filed at once during the holiday recess of the court and is now pending. The petition for a rehearing was filed in good faith and not for delay, which is neither desired nor desirable for the appellant bank. It is not, however, desired by us, nor do we think it proper, that a mandate should issue during the pendency of said petition:

EDWARD O. BROWN,
Counsel for The Union Stock Yards National Bank.

Office of the Court of U. S.
FILED
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JAMES H. McKENNEY,
CLERK.

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Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

REPLY ON BEHALF OF APPELLANT.

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REPLY ON BEHALF OF APPELLANT.

(The references are to the pages of the Record as printed.)

I.

Appellees' counsel have in their Brief expended a good deal of labor in the endeavor to prove that their case comes legitimately within the equitable jurisdiction of the Circuit Court. They do not, however, appear to have any clear and consistent notion of what that case is, but seem to forget that whatever title (if any) they may have to relief of whatever nature depends on the truthfulness and pertinence of the allegations of their bill, and that they are not at liberty to take up their position upon any vague suggestions which, after the issue has been made up, it may suit their purpose to gather from the testimony of their witnesses.

The bill alleges that Rappal, Sons & Co., having in their possession money of the complainants and being bound either to pay it over to them or to hold it separate from their own funds and subject to complainants' order, did on the contrary deposit it to their own account and credit in the Union Stock Yards Bank, which, though having notice of the true ownership and the duty of Rappals with regard to it, nevertheless received it and placed it to their credit, and has since refused to pay it over to the complainants on request, but retains it for its own use.

We have shown (Appellant's Argument, pp. 25–29), that herein the bill alleges a clear case for an action at law for money had and received. It asks nothing more than that repayment of the money which would necessarily follow upon a judgment in their favor in that action. We have also shown (Appellant's Argument, pp. 31–34) that where the remedy at law is thus "plain, adequate and complete," the courts of the United States, however it may be with other tribunals, will not entertain jurisdiction in equity. Appellees' counsel have cited in their Brief quite a number of cases, bearing more or less directly on this topic, but not one which contradicts either of these propositions.

In *Williams* v. *Everett*, 14 East., 582, (cited on p. 11 of Appellees' Brief), the court held that the action for money had and received would not lie, because the plaintiff had acquired no property in the money; and on their view of the matter, there could have been no recovery by the plaintiff against the defendants in equity any more than at law; the court holding that until the defendants had in

some way, whether expressly or by implication, consented to undertake the trust (which in fact they had expressly refused), there was no trust in favor of the plaintiff, and he had no right in the money more than any other creditor of the remitter.

The case of *Hall* v. *Marston*, 17 Mass., 575, cited on p. 12 of Appellees' Brief, in which it was held the action would lie, differs from that of *Williams* v. *Everett* in the very point on which the latter turned. The Massachussetts court say (p. 579):

"In that case there was a positive refusal of the agent to act according to the orders of the person who remitted the money, except so far as to receive the contents of the bill. The difficulty was to establish an implied promise against an express denial. In the case at bar there was no refusal, but the orders were received and acted upon in everything but paying the plaintiff, and there was an apparent acquiescence in the orders of Bradford."

Obviously there was no actual privity between the claimant and the depositary in this case more than in the other.

In the case of *Yates* v. *Bell*, 3 Barnw. & Alderson, 643, also cited in Appellees' Brief, one Ingram had sent to the defendants a bill of exchange (which was afterward paid) for the purpose of taking up a dishonored acceptance of his own; and, on the application of the plaintiffs, who were the holders of that acceptance, the defendants had refused payment to them. The case was declared by Chief Justice ABBOTT to be identical in principle with *Williams* v. *Everett*. He says (p. 645):

"Where a party to whom a bill is remitted repudiates the trust with which the bill is clothed, that may give to the person remitting the bill a right to bring trover for it; but it does not give any right of action to the person to whose account the bill is directed to be applied, and unless some agreement had taken place respecting the bill, between the defendants and the plaintiffs, the former could only be considered as holding the bill for the use of Ingram."

Plainly the position taken by the court was, that the plaintiffs had no claim at all against the defendants (who were liable to Ingram only), not that they had a distinctively equitable claim.

In *Sims* v. *Brittain*, 4 Barnw. & Adolphus, 375, Gribble, joint owner and sole manager of a ship, kept his account of the ship's receipts and disbursements with the defendants, in his own name alone. On his death it was held that the defendants were responsible in law to his executors, and not to the surviving joint owners, for the credit balance on this account, and hence that no action for money had and received could be maintained by the latter. A fact on which the court specially relied, was that the account had been kept as it was, with the knowledge and consent of the other joint owners. (p. 378.) Lord TENTERDEN also had rested his order for a nonsuit at the trial, on the ground that "Gribble had been permitted "by the owners to have the absolute dominion of the "ship's earnings." (p. 376.) In our case the complainants' bill expressly alleges that Rappals deposited the money to their own account, without the consent or knowledge of the complainants.

In this case of *Sims* v. *Brittain* also, the trouble was not so much with the form of the remedy as with the substance of the claim. A like claim was set up by the same plaintiffs in the case of a bankrupt banking firm with which Gribble had made similar deposits (*ex parte Gribble*, 3 Deacon & Chitty, 339), and was first heard by the Vice-Chancellor, who, on careful consideration, directed the bringing of an action at law, "for the "purpose of ascertaining what claim the other part-own- "ers" than Gribble "had to this fund in the hands of the "bankrupts." (p. 345.) That action resulted just like that of *Sims* v. *Brittain*, and the result was accepted by the Court of Review in Bankruptcy, after full argument and advisement, as decisive of the whole claim in equity as well as at law (pp. 343 & 344, 345); and it was ordered that all dividends on the fund be paid over to Gribble's executors, the other part-owners being remitted to their rights as general creditors of his estate. (p. 346.) One of the three judges, Sir J. Cross, was not quite clear as to whether there was not some equity in their favor, but expressly disavowed any intention of dissenting from the judgment. (pp 344 & 345.)

Appeal was taken to the Lord Chancellor, who affirmed the decision, as appears by a remark of Lord Justice Knight Bruce, during the argument of *Bodenham* v. *Hoskyns*. (2 DeGex, Macnaghten & Gordon, p. 906.)

We have already (Appellant's Argument, pp. 29–31) sufficiently pointed out the distinction between the present case and that of the *Central National Bank* v. *The Connecticut Mutual Life Insurance Co.* (104 U. S., 54), on which appellees' counsel mainly rely. It is vain for them to say that, "the depositing of the money in the bank" by Rappals "was not in any sense an embezzlement, and "only became a fraud by the attempted misapplication," when their bill says that it was "the duty of Rappal, Sons "& Co. to hold said proceeds subject to your orators' "order, or to deliver to your orators the proceeds of said "sales" (Record, p. 2), and "to hold the same distinct "from their private funds" (p. 12); and that, nevertheless, "the said Rappal, Sons & Co., without the knowl-"edge or consent of your orators, deposited the same in "the said Union Stock Yards National Bank *to their own* "*account and credit.*" (p. 2.)

What appellees' counsel have to say about trustees and *cestuis que trustent* is totally irrelevant to the case made by their bill. A legal title in the trustee is an essential element in every trust; and the language of the bill most explicitly and studiously negatives any title whatever in Rappal, Sons & Co. to the money sought to be recovered, and makes them, with regard to it, mere servants of the complainants. The use of the word "trust" once or twice in the bill, as amended, can have no effect to counteract the particular description of Rappals' functions, which the bill gives.

On the other hand, in all the equity cases cited in this division of Appellees' Brief, there is more or less of legal title in the defendant to the money sought to be recov-

ered. Moreover, many of those cases are cases of concurrent jurisdiction both at law and in equity, which makes them inapplicable here; for the courts of the United States do not, under any circumstances, exercise merely concurrent equitable jurisdiction.

In *Pannell* v. *Hurley*, 2 Collyer's Chancery Rep., 241, cited on p. 12 of Appellees' Brief, there was evidently an express trust, and an undoubted legal title in the trustee who made the misappropriation, and consequently in the bankers who received it.

Bodenham v. *Hoskyns*, 2 De Gex, Macnaghten & Gordon, 903, cited on page 13 of Appellees' Brief, was also evidently a case of express trust, the check in question having been drawn by Parkes, the trustee, in favor of his private account, upon the account which he kept with the defendant bankers as such trustee under the title of the Rotherwas Estate Account. The bill to compel the bankers to refund was filed by the *cestui que trust;* the legal title to the impaired fund being in the trustee, Parkes, who alone had any right to draw upon the bankers on account of that fund. "Unquestionably," says Vice-Chancellor KINDERSLEY, "it was the account "of Parkes, and the bankers were to look to Parkes as the "only person entitled to draw upon that account." (21 Law Journal Rep., N. S. Chancery, 868—a fuller report of the original suit, the proceeding reported by De Gex, Macnaghten & Gordon, being a brief affirmance on appeal.)

In *Kirkpatrick* v. *M'Donald*, 11 Penn. State, 387, (referred to on p. 10 of Appellees' Brief), the court say (p. 392):

"Whether in this State the legal tribunals ought in the exercise of the chancery powers recently conferred, to assume cognizance of those cases where the action for money had and received affords a full remedy, it is not now necessary to consider, though certainly there can be no objection where the equitable remedy is more convenient, as, for instance, where an account is incidentally requisite. But where the trustee has duties to perform other than of mere disbursement, a technical and continuing trust is presented, which can be satisfactorily treated only in equity. Of this the present is a pregnant example, which imperatively calls for the powerful and plastic hand of a chancellor to administer the various and conflicting interests that have sprung up."

Obviously this case is no authority for the present purpose on the question of jurisdiction. The Circuit Court here found no need of any accounting, nor do the complainants ask of the appellant bank any "duties other than of mere disbursement."

In *Pennell* v. *Deffel*, 4 De Gex, Macnaghten & Gordon, 372, the suit was brought to appropriate to the purposes of an express trust, money which Green, an official assignee in bankruptcy, had standing to his personal credit in two banks, and which was claimed by his personal representatives, but which was derived from assets of bankrupt estates entrusted to him in his official capacity. One of the accounts, though not so designated, had been avowed by him to be his official account.

The case of *Frith* v. *Cartland*, cited by appellees' counsel from 2 Hemming & Miller, 417, will be found

more fully reported in 34 Law Journal Reports, N. S., Equity, 301. The bill was filed by Frith & Co., merchants, against the assignees in involuntary bankruptcy of one Edwards, to establish the fiduciary character of a deposit which Edwards had made to his own credit in an English bank, and of the proceeds of money, drafts, etc., which had been found in his possession when he was arrested in Sweden, where he had absconded, and which had by agreement between Frith & Co. and the assignees been deposited with the accountant in bankruptcy to the credit of the official assignee, to abide the decision of this suit. (34 Law Journ. Rep. N. S. Equity, 302.) There was no question but that the money claimed by Frith & Co. was the proceeds of bills which Edwards had drawn on them, and which they had accepted solely on his promise either to get the acceptances discounted and turn over the money to them, or (if the rate of discount proved to be higher than anticipated) to return the bills to them the same day; the only object of the transaction (which was proposed by him) being to reduce a balance which he owed them. (34 Law Journ. Rep. N. S. Equity, 301.) Doubtless he led them to suppose that he would take care of the acceptances at maturity. He got the acceptances discounted in one block with some other bills which, so far as appears, and as the court assumed for the purposes of this decision, were his own property. Instead of paying over the proceeds of the Frith acceptances to them, he deposited part of the money in bank in England, and absconded with the rest, having first converted a part of it into drafts.

In this case the question of jurisdiction was not raised, but the proceeding bore some analogy to an amicable interpleader, the funds in question having been in the pos-

session of neither claimant when the controversy arose, and having come in part into that of the assignees in bankruptcy solely for the purpose of this proceeding. In addition to this, the fact that part of the fund was still in possession of a third party, the bank in which Edwards had deposited it, and the room for question as to whether a large part was Edwards' money or that of Frith & Co., arising in the first place from their having accepted his drafts, and thus ostensibly entitled him to the proceeds, in the second place, from his having immediately mixed the proceeds of those drafts with money admitted to be his own, and finally from the transformations to which he subjected the greater part of the money thus obtained—all this might well throw a doubt upon the plainness and completeness of any remedy which could be had at law, and might thus justify the resort to a court of equity, where all the questions could be readily adjusted in a single proceeding. Obviously there is in the case now in hand nothing analogous to these considerations.

In *Varet* v. *N. Y. Insurance Co.*, 7 Paige, 560, speaking of an action at law for money had and received, the Vice-Chancellor says (p. 564):

"The remedy there may be difficult and doubtful in these respects: whether it should be undertaken in the joint names of the complainants, or upon the ground of a partnership in the cargo insured; whether it should be prosecuted in the name of Roulet as the surviving partner of Icard and Mumford in the adventure, or whether the claims of the complainants should be treated as several and distinct interests, requiring three several suits for aliquot parts of the $5,900. To avoid these doubts and difficulties, I am disposed to say this court will entertain jurisdiction upon the present bill."

In affirming the decree, the Chancellor says (p. 567):

"Although it is probable that an action for money had and received might have been sustained in this case in the name of the surviving owner of the cargo, the case of *Randal* v. *Cochran* (1 Vesey, Sr., 98) shows that a remedy in equity is also given upon the ground that the person receiving the fund under such circumstances is a trustee thereof for the benefit of the party who is equitably entitled to the same. The equitable action of assumpsit is now allowed in many cases of this kind where the remedy originally was in equity only. But the fact that a remedy now exists at law in such cases, does not deprive this court of its ancient jurisdiction to grant relief here. Or in the language of an English chancellor, this court is not at liberty to give up its jurisdiction because courts of law have fallen in love with it. But I admit it would probably be wise in the legislature to take from this court a great portion of the jurisdiction which is now concurrent with courts of law, and confine it exclusively to those courts, where the parties could have the benefit of an open examination of the witnesses in the presence of the court and jury."

The decision in the case of the *N. Y. Insurance Co.* v. *Roulet*, 24 Wendell, 505, is simply an affirmance of that in *Varet* v. *N. Y. Insurance Co.* Of the three judges who gave opinions, the President of the Senate and Chief Justice NELSON were clear that an action for money had and received might have been maintained: and Senator EDWARDS says (p. 518.):

"It is true that courts of law in the action for money had and received, have now jurisdiction of most of this class of cases, and furnish an adequate remedy when sufficient facts can be proved without calling on the defendant to disclose them. In *Law* v. *Thorndike*, 20 Pickering, 320, the bill, which was filed under this same French treaty, was dismissed on the ground that the plaintiff had an ample remedy at law in an action for money had and received if he was entitled to recover. That case, however,

was put upon the ground that it was unnecessary for the plaintiff to come into the court for a discovery of facts. * * * But it is not so in the case under review. The appellants against whom the claim is made are the original parties, and the bill calls upon them to answer under oath the allegations in the bill for the purpose of affording the necessary evidence, and also calls upon them to discover the amount paid to them upon the certificate issued. It appears to me, under such circumstances, we are not at liberty to infer that the party could make the necessary proof to recover at law in an action for money had and received, and on that ground to say the bill should have been dismissed."

The President of the Senate (p. 512) sustains the equity jurisdiction on the grounds stated by the Vice-Chancellor; and the Chief Justice says (p. 514):

"There are many subjects of judicial investigation over which the two courts have concurrent jurisdiction. This is one of them. Whether the arrangement is a wise one or not, must be left to the legislature."

So far as the courts of the United States are concerned, the legislature has spoken in accordance with the suggestion of Chancellor WALWORTH; and these courts will not take jurisdiction in equity where a complete and adequate remedy can be had at law.

It is obvious that none of the difficulties attending an action at law in the case of *Varet* v. *The New York Insurance Co.* exist in our case; and the difficulty as to proof has practically ceased to exist in any case since the rules of evidence have been changed so that discoveries and inspection of documents can be had as readily at law as in equity.

We may remark that in the case of *Varet* v. *The New York Insurance Co.*, there was an objection, not mentioned by the courts, to proceeding at law, in that

only a part of the sum awarded had actually been paid to the insurance company; hence the remedy must have been indefinitely delayed, or several actions would have been requisite to recover the whole. This objection, however, was brought to the notice of the Massachusetts' court in the parallel case of *Law* v. *Thorndike*, 20 Pickering, referred to by Senator EDWARDS, and was evidently regarded as of no moment by that court, which dismissed the bill notwithstanding. (20 Pickering, pp. 319 and 320.)

In the case of *Crandall* v. *The Plano Manufacturing Co.*, 24 Federal Reporter, 738, the bill alleged that the complainants did not know and were unable to ascertain the exact number of machines made by the defendants for which royalties were due under the license sued on, and that the defendants had, on demand, refused to give the information. It prayed for an accounting and payment of the royalties found to be due. The need of discovery and accounting made this a clear case, in accordance with the principles laid down in the case of the *N. Y. Insurance Co.* v. *Roulet*, for the concurrent jurisdiction of a court of equity; but Judge BLODGETT, of the Northern District of Illinois, held that inasmuch as recent statutes gave equal facilities at law as in equity for ascertaining the requisite facts, there was a plain, adequate and complete remedy at law, and therefore no jurisdiction in equity; therein (as he stated) following the decision of this court in *Root* v. *The Railway Co.*, 105 U. S., 189.

II.

Before examining the views put forth in the second, third and fourth divisions of Appellees' Argument, on the questions of fact involved, it may not be amiss to notice their fifth proposition, which would seem to withdraw those questions for the most part from the consideration of this court. It will be seen, however, that this proposition, "that in chancery cases where the evidence is conflicting, "this court will not attempt to disturb the finding of the "court below" (Appellees' Brief, p. 33), is contradicted by all the authorities which appellees' counsel cite in support of it. On its face it is utterly unreasonable; it would amount to very nearly the same thing as denying any appeal at all on questions of fact. It is only in cases where the conflict is such as to make it impossible to reach any certain conclusion on the disputed questions, and the mind is shut up to a choice between two doubtful positions, that the finding of the court of first instance is acquiesced in. This is not at all such a case. On no material question of fact is there any room for doubt when all the evidence is considered; on scarcely any is there any real conflict of testimony.

The statement of the learned counsel for the appellees reverses the true state of the case. There is very little conflict of testimony as to questions strictly of fact. But there is great discrepancy in the conclusions of law which witnesses and counsel draw from the facts. And it is very largely in these that, as we submit, the learned judge who decided the case has erred.

He does not find, as matter of fact, that the bank had notice of Gillespies' pretended rights, but only that it had notice of facts which were sufficient to put it on inquiry. In holding that this was enough to charge it with notice as matter of law, he contradicts the established doctrine of this court. Neither does he find, as a matter of fact, that there was bad faith on the part of the bank; for he says: "I have given credit to the testimony of the presi-"dent and cashier." That testimony expressly and emphatically denies the existence of bad faith.

In *Mziso* v. *The U. S.*, 8th Wallace, 337, one of the cases cited by counsel for appellees in support of their extraordinary proposition, there was not merely a conflict of evidence; the testimony was not only conflicting, but "unsatisfactory"—that is, nobody could be sure from it what the truth was. The court say (p. 340):

"The contradictions are so flat that the counsel of the appellant is forced to state that the mind is left in uncertainty whether there was any exclusive occupation of the land by either of the parties. Under these circumstances, there being great doubt as to which side the weight of evidence inclines, we should not be justified, under any rule governing our actions in such cases, in interfering with the decision of the District Court."

Such language can have no application to our case. Here practically the only conflict of testimony is as to what was agreed between the elder Gillespie and the elder Rappal; as to that, we think, when all the circumstances are considered, there is no room for reasonable doubt; the learned Circuit Judge having, as we have pointed out in our Argument in chief (pp. 47–57, 61–63, 70–82), been altogether misled as to the preponderance

of testimony on this point. On all other matters, what was actually done in pursuance of the agreement, what action the appellant bank took, and what information it had, there is practically no contradiction among the witnesses and documents.

In *Parker* v. *Phelteplace*, 1 Wallace, 684, there was a conflict of evidence and some room for doubt; but this court considered the proofs independently, and, of its own judgment, came to the same conclusion as the Circuit Court. The opinion says (p. 689):

"We agree that there is ground for suspicion that the purchase was made by the friends and for the benefit of Edward Seagrave, the debtor, but concur with the court that the weight of the proofs is otherwise, and the bill properly dismissed. The question upon the assignment to Updike is so intimately connected with *the transaction we have just examined*, that the conclusion arrived at in the one must control that in the other."

In *Lytle* v. *Arkansas*, 22 Howard, 193, this court considered in detail the conflicting testimony, and Mr. Justice CATRON, delivering the opinion of the court, says (p. 206):

"Our opinion is that the affidavits on which the occupant entry was founded were untrue in fact and a frand on the register and receiver, and that Cloyes had no *bona fide* possession as tenant of the tinner's shop, within the true meaning of the act of 1830. We are also of the opinion that the affidavits are disproved as respects the fact of cultivation in 1829. There was no garden cultivated in that year, adjoining or near to the shop. To say the least, it is quite doubtful whether there was such cultivation east of the Quapaw line; and the State courts having found that there was none, *it is our duty to abide by their finding, unless we could ascertain from the proof that*

they were mistaken, which we cannot do, our impressions being to the contrary."

The words we have italicised state the rule as it is. And we certainly should not ask this court to depart from the finding of the learned Circuit Judge, if we were not confident that it will ascertain from the proof that he was mistaken.

In *Harrell v. Beall*, 17 Wallace, 590, there was a square conflict of testimony, and this court carefully examined the questions of fact, which were the only matters in dispute, and their conclusion was thus announced by Mr. Justice MILLER (p. 591.):

"It is wholly a question of the weight of evidence, involving no controverted proposition of law; and the pressure of business in this court will not justify us in reproducing in our opinion the facts on which our judgments rest in such cases. It must suffice to say that *we are convinced* that the sale to Echols was a barefaced fraud, and that if the appellee did not know it when he purchased of Echols, it was because he intentionally shut his eyes to the truth, and that he had such notice and information as made it his duty to inquire further, and that the slightest effort by him in that direction would have discovered the whole fraud. Such were the views on which the decree below was founded, and it is accordingly affirmed."

Affirmed, manifestly, not because the court blindly followed it, but because on thorough examination, they found it correct.

III.

Coming now to the questions of fact, appellees' counsel are mistaken in saying, on page 14 of their Brief, that it is not denied that the order for the delivery of the cattle in question was "transmitted to Rappal, Sons "& Co. for the purpose of turning the cattle into their "hands as commission merchants for sale *for the account "of A. J. Gillespie & Co., to the extent of the purchase "money paid by them.*" The last clause of the proposition is denied by appellees' own bill, which says (Record, p. 2) that they shipped the cattle to Rappal, Sons & Co., "to be sold on commission for the account of your "orators," no qualifying words being added, and says further that the *net proceeds* of the *sale* (no mention being made of the original purchase money) were to be held by the Rappals subject to the order of complainants, or delivered to them.

Not to dwell on this, we not only deny but (we submit) have proved that the consignment was not for account of Gillespies at all. (Appellant's Argument, pp. 40-43, 47-58, 70-75).

The learned counsel in saying (Appellees' Brief, p. 16) that the accounts of sale rendered by Rappal, Sons & Co. state that the sales were "for account of A. J. Gillespie "& Co.," have unaccountably overlooked an important clause in the heading of those documents. Reference to pp. 329-331 of the printed Record will show that the sales are described as "for account of A. J. Gillespie & "Co., *acc. Bowen*," or "*Bowen & Co.*"

These reports, in fact, were of no interest to Gillespies, who were entitled to receive from Bowen & Co. the money they had advanced and their agreed compensation, no less and no more, no matter what the cattle brought. (Appellant's Argument, pp. 48-56).

On p. 17 of their Brief, appellees' counsel repeat, as something admitted, their erroneous assertion that the cattle were consigned for sale "for the account of A. J. Gillespie & Co.," and add that "A. J. Gillespie & Co. "acquired legal control of the cattle *for the purpose of "their protection.*" It is true that Gillespies acquired legal control of the cattle, but that control was only momentary; and this very fact shows that it could not have been for the purpose of protecting themselves; that idea is purely a subsequent invention of theirs. The control was merely incidental to the work of forwarding the cattle, which they had undertaken for hire. (Appellant's Argument, pp. 70-82.)

As to the remark of appellees' counsel on p. 18 of their Brief, that "on the face of the matter, these circumstances" —which they do not state quite accurately— "would seem "to be the details of the method by which A. J. Gillespie "& Co. proposed to protect themselves on account of the "payment made by them of the purchase money of the "cattle"—we may be permitted to suggest that the manifest facts that Gillespies, on forwarding the cattle, immediately proceeded to put them out of their control by sending the orders for delivery without restriction to Rappal, Sons & Co., and turning over the drafts, without any accompanying documents, to the Kansas City Bank, whereas they might in every instance have attached the order to the draft, are details of a strange method of protecting themselves. These, like the other facts, indicate

the truth of our contention, that Gillespies relied for repayment entirely upon the resources of the elder Rappal and his partners at Kansas City, and that the drafts were drawn by them simply because that was a part of the business which they undertook to do.

IV.

How utterly appellees' counsel have failed in their attempt in the third division of their argument (Appellee's Brief, pp. 18–21) to state the true effect of the evidence as to the agreement under which the consignments to Rappal, Sons & Co. were made, will appear by reference to Appellant's Argument, pp. 70–82. Among their errors are, omitting to distinguish what Thomas Gillespie testifies of his own knowledge from what was told him by his father; and to notice that the witness James had no knowledge, and did not pretend to have any, of the contract under which the business was carried on, and had evidently never thought of the questions propounded to him until just before he came to give his testimony; leaving out of account the knowledge of the arrangement, which the younger Rappals derived from conducting the business under it during the whole time that it was in force; and, finally, disregarding the corroborative documentary evidence to which we have referred in the cited passages of our Argument.

Due consideration being given to these things, it will appear that the preponderance of evidence is quite the contrary way to what appellees' counsel imagine.

V.

The fourth proposition of appellees' counsel, discussed on pp. 21–32 of Appellees' Brief, depends for its plausibility entirely on ignoring the decisions of this court, and the great preponderance of other authority, on the rights of a person taking money or negotiable securities for a valuable consideration. These authorities are discussed on pp. 113–127 of Appellant's Argument, and are too positive and weighty to be disturbed by the citations of appellees' counsel, most of which indeed bear only a remote analogy to the matter now in hand.

The law is well settled in this court, and indeed in most other tribunals, that even if "the circumstances known by "the officers of the bank were sufficient to put them on "inquiry," that would not render the bank "chargeable "with notice" that the money deposited with it by Rappal, Sons & Co. was not rightly subject to their disposal.

But, even if this case were to be decided by rules which this court, like most other courts, has expressly rejected, the facts known to the appellant bank were not such as, under any rule, to call for the suspension of its relations with Rappal, Sons & Co., and the prosecution of an elaborate investigation at the Union Stock Yards and at Kansas City, such as appellees' counsel have marked out for it with a serene disregard of the conditions necessarily incident to the conduct of the business of a great financial in-

stitution, where deposits, checks, drafts and collections, to immense amounts are constantly crowding upon each other, each in its several department, so that unless they were all disposed of with the utmost promptness, in accordance with a preëstablished routine, halts and special inquiries being made only where the plainest necessity exists, the business could never be got through with at all.

The circumstances under which the appellant bank received the money which appellees seek to get away from it, have been already discussed on pp. 106–113 and 131–148 of Appellants' Argument, with a closer conformity to the Record—if it is not immodest to say so—than appellees' counsel have found practicable. It may not be amiss, however, to call attention here to a few of their principal errors.

1. In the first place, the appellant bank was under no obligation to the Kansas City bank to do anything more than the duty imposed by law upon any bank receiving paper for collection, except what may be inferred from the fact that it had been customary to give the Kansas City bank telegraphic notice of nonpayment. The assertion that the Union Stock Yards Bank was bound to make any investigation in regard to paper received from the Kansas City bank more than from any other bank, is purely gratuitous.

If the custom of giving telegraphic notice of nonpayment was made known to Gillespies—of which we have no evidence beyond the testimony of A. J. Gillespie—it was not done with the knowledge or consent of the Union Stock Yards Bank, and created no obligation of that bank to the Gillespies.

We have already pointed out (Appellants' Argument, pp. 164–166) that the letter relative to the financial character of Rappal, Sons & Co. was not written with any intention or expectation that it would be shown to Gillespies, and was not asked for for any such purpose, and that it was substantially accurate.

There was no business relation at all between the appellant bank and the Gillespies, and no relation with the Kansas City bank more intimate than that which existed with every bank sending paper for collection.

2. In the second place, the assertions on p. 23 of Appellees' Brief, "that promptness was indispensable in "the payment of drafts, that the business was largely "carried on upon a system of credits guaranteed and se-"cured by agreements that proceeds of shipments should "be applied to pay drafts, and that any failure to promptly "pay and apply proceeds was a circumstance sufficient to "put the bank upon inquiry," are unaccompanied by any citation of evidence or authority, and are in flat contradiction of the evidence, which shows that delay in payment of drafts was not at all uncommon, because drafts frequently came before the cattle did, and cautious factors would not pay until they had seen the cattle; and that agreements to apply the proceeds of sales to the payment of drafts would have been in a great many cases entirely inapplicable, because the drafts were frequently paid in advance of sales. (See Washburn's testimony on p. 225 of printed Record.) Hence, failure to pay a draft immediately, or to pay it at all, or to remit proceeds to the consignor was a matter of no significance at all. Of course the appellant bank was bound to give the no-

tice required by law whenever a draft was not paid; if anything more than this be meant by the words "prompt "notice to the parties liable to be injured thereby," those words also are unsupported by evidence or authority. All this is pointed out on pp. 135-137 of Appellant's Argument.

It will be noticed that the drafts against consignments of cattle were not ordinarily for the proceeds, but for advances, being drawn and frequently received before the cattle arrived, and of course before it could be known what they sold for. This appears from the fact of Rappal, Sons & Co. having to borrow continually from the appellant bank to pay such drafts. (pp. 43 & 96 of printed Record.)

3. In the third place, the correspondence, such as it is, pointed out on page 24 of Appellees' Brief, between Rappals' deposits on the 2d of October and the draft arriving the same day, was accidental and raised no presumption of any connection between the two. There was far from being any regular course by which drafts came in on the same day that cattle were sold. More frequently, as we have already pointed out, the draft came before the cattle did; sometimes it came later, as was the case with complainants' draft for $19,000, which did not reach the bank until Monday the 5th, whereas the proceeds of the cattle, against which it was drawn, had been deposited on Saturday the 3d, as appears by pp. 57 and 58 of the printed Record. Moreover, on the 2d of October, when the deposit of $6,649.50 was made, Rappals drew two checks of $4,848.60 and $1,145.72 respectively, neither of them in favor of the appellant

bank. Why was it not as probable that these checks made the proper application of so much of the deposit as did not beneficially belong to the Rappals themselves, as that the deposit should be held to pay the draft? This ingenious computation would never have occured to any one who had not a case to support.

Moreover, nobody among the officers of the appellant bank had the opportunity of making any such computation. Doubtless there are banks scattered about the country in which all the transactions of a day come within the cognizance of a single officer. But where the business is of such magnitude as that now under consideration, the teller who makes the collections, the one who receives the deposits, the one who pays the checks, have each all that he can do in his own department, and no time to inquire what is going on in any other; and of the officers intrusted with discretionary powers, none can have cognizance of the details of any department—how many checks and in whose favor each customer is drawing, of what elements his daily deposits are composed, whether sale tickets or checks or currency, what persons are making drafts and on whom—it is impossible that the president and cashier should know all these multitudinous details. The approximate magnitude of each considerable customer's business, the balance to his debit or credit from day to day, is the utmost one mind can carry, except when particular cases for some special reason demand particular investigation. As we have already shown, no such special reason appeared in the case of Rappal, Sons & Co. It is on the gratuitous and utterly unreasonable assumption that the discretionary officers of the bank knew, or could be expected to know, of such details, that the reasoning of appellees' counsel on the facts of this case is almost entirely founded.

4. Fourthly, in saying that the officers of the appellant bank intentionally withheld the customary telegraphic notice of the nonpayment of the $6,200 draft, the learned counsel fly in the face of all the evidence. This fully appears by Appellant's Argument, pp. 133–135. That there is no reason to suppose that the delay in sending this telegram had any practical effect is shown on pp. 153–160 of the same Argument.

The assertion that the bank took "the responsibility of "holding that draft until the next day, contrary to instruc- "tions," is also an utter misapprehension. No draft was ever returned until the day following that on which it was presented: and the draft in question was treated like every other, with all the expedition practicable and all that the law requires. (Appellant's Argument, pp. 131–133, 135.) The instruction (given only by being included in the Kansas City bank's printed letter-heads), "Do not hold items for convenience of your customers, "but in case of nonpayment protest and return promptly "unless otherwise instructed," cannot reasonably be construed as requiring any more.

5. The doctrine that because a commission merchant who had been permitted to overdraw his account for the purpose of making advances on consignments, has deposited enough to make good the overdraft, and has declined to pay a draft which had come the day before for an amount much smaller than that of these deposits, the managers of a bank transacting a daily business of a million dollars, whose customers are principally commission merchants every day making such deposits and refusing such drafts, must suspend that customer's account and, waiting three hours on a Saturday afternoon

after the bank has closed for the day, go over to the post-office and search a mail which, in the ordinary course of business, would be delivered at the bank Monday morning, for a possible draft on that customer, is a doctrine entirely original with the learned counsel for appellees, and likely, we think, to be left in their exclusive possession.

6. We do not know what to make of the assertion of appellees' counsel on page 25, and again substantially on p. 29, of their Brief, that "it is not claimed that any application was made of" Saturday's deposits "on Saturday." The very act of depositing money to the credit of Rappal, Sons & Co.'s account was an application of it to make good any deficit in that account. (Appellant's Argument, pp. 119 125.)

More than this, Rappal, Sons & Co.'s account, like that of every other depositor, was balanced at the close of every day's business and the net amount due from them to the bank, or from the bank to them, thus made matter of record. (See Washburn's testimony, pp. 45 and 226 of printed Record.) The complete series of these daily balances appears in Exhibit 1 of W. H. Boprey's testimony, inserted between pp. 468 and 469 of the printed record. It shows that whereas Rappals' account was overdrawn $18,454 at the close of business on Friday the 2d of October, at the close of business on Saturday the 3d, the overdraft had been made good, and there was a balance to their credit of $1,136. There was thus no need of "any call by the bank upon Rappal, Sons & "Co. to settle their overdrafts." (Appellant's Argument, pp. 119 121.) All this, it will be borne in mind, was

done on the business day preceding that on which the telegram from the Kansas City bank, quoted on p. 26 of Appellees' Brief, was received.

7. It is not quite accurate to say, as appellees' counsel do on page 27 of their Brief, that the appellant "bank "had been carrying *an overdraft* for Rappal, Sons & Co. "from the 4th day of September, or about 30 days." Reference to the list of balances (between pp. 468 and 469 of the printed Record) will show that the overdraft of September 4th had been covered more than a dozen times over by subsequent deposits, but that some eleven additional overdrafts of considerable amounts had been allowed on as many different days between that date and the 2d of October. This fully corroborates the testimony of the president and cashier of the appellant bank, that during all this time the Rappals had been obtaining frequent overdrafts to make advance payments on cattle, and afterwards depositing the proceeds when those cattle came to be sold.

8. The following assertion, on p. 28 of Appellees' Brief, is liable to convey a very erroneous impression: "On Monday, after the $19,505.62 draft had come to the "hands of the Union Stock Yards bank, no communica- "tion was sent to the Kansas City Bank, although it was "known quite early that the draft would not be paid, "until a telegram of inquiry had been received." The time which appellees' counsel speaks of as "quite early" was shortly after ten o'clock, when the Union Stock Yards Bank opened. One of the Rappals then told the cashier that they were expecting a draft for $19,000,

which they did not intend to pay, and the cashier caused the fact to be telegraphed to Kansas City as soon as he could find the draft in question, which had come in that morning's mail. It does not appear when the telegram of inquiry from the Kansas City bank was received by the appellant bank. It appears to have been received at the telegraph office at 10:36 A. M. There is no evidence that it came before the first telegram was sent from the Union Stock Yards Bank, though if promptly delivered from the telegraph office, it must have come very nearly at the same time. (See Appellant's Argument, p. 160.)

That the telegram of the appellant bank appears not to have reached the Kansas City Stock Yards until 2 P. M. does not prove that it was not sent out betimes in the morning. The telegraphic service westward to Kansas City appears not to have been prompt; the dispatch sent from the appellant bank not long after 10 on the morning of the 3d (p. 236 of printed Record) appears not to have reached the telegraph office at the Kansas City Stock Yards till 2:30 P. M. (p. 30 of printed Record.)

Appellees' counsel are not accurate in saying that the last telegram of the appellant bank on the 5th was "sent at 4 P. M." It was *received* at the Kansas City Stock Yards office just before that time—quite a different thing. (p. 313 of printed Record.) The information "Don't think they had anything to pay with," was such as the appellant bank could hardly have been in a position to give until after Washburn's interview with the younger Rappals, which began about noon at Rappals' office. (pp. 283 and 293 of printed Record.)

9. Appellees' counsel suggest, on p. 29 of their Brief, that the statement of the younger Rappals to Mr. Washburn, on the 5th of October, that the cattle in controversy belonged to Bowen & Co., was so improbable in view of the fact that all consignments had been delivered on orders from Gillespies (as he could find out by investigation at the office of the Stock Yards & Transit Co.) and that the drafts were drawn by Gillespies, as to put the bank upon inquiry. What might be found by an investigation which has not been made, is not matter to put any one on inquiry. And the orders in question, which would be seen not to have originated with Gillespies but only to have passed through their hands, would not have shown anything more than the fact, that they had acted as forwarders. But Rappals had in their own office, and may very probably have shown to Washburn, what was much more to the purpose, the long series of Gillespies' own statements all showing that the consignments were on account of Bowen & Co., and the scale tickets from the Kansas City Stock Yards showing that Bowen & Co. were the real purchasers. (Appellant's Argument, pp. 42 & 43, 49.) These documents would have fully justified the confidence which Washburn, from his previous acquaintance with the Rappals, was disposed to place in their representations. (Appellant's Argument, p. 147.)

10. The story on page 29 of Appellees' Brief, of a general settlement on the 9th of October, when Rappals' deposits were applied in part to make good their overdrafts and in part upon their overdue note of $7,000, and a new note of F. J. Rappal, Sr., was given for the balance of the $7,000, is for the most part imaginary. The overdrafts, as we have already pointed out, were re-

paid on the 3d. The payments on the note were made by checks on the 5th and 6th. (Record, pp. 81, 113—there is probably an error on the latter page in the date of one check), and the new note was actually given on the latter date, though not credited on the books of the bank until the 9th (Record, pp. 81, 217), the delay being probably caused by having to send the mortgage by which the new note was secured to another county for record.

11. The sixth proposition of Appellees' Brief (p. 33), if the purely gratuitous denial of the right to accept deposits in repayment of overdrafts be eliminated from it, applies to only $1,933 of the amount in controversy, the payment made on Rappals' note by their check of October 6. (Record, p. 81.) The telegram of the Kansas City bank, on which the proposition is based—"Get proceeds thirty-four cars from Rappal, credit amount on draft, & advise at once."—obviously conveys of itself no information on which anybody could reasonably be required to act, or would be justified in acting. It is a mere request to make a certain demand on Rappal, Sons & Co., and leave it to them to comply or refuse. Of course it suggested inquiry; and although a person receiving money in payment of a *bona fide* debt is not bound to make inquiries, yet the president of the appellant bank did, as we have already seen, inquire of the Rappals, and learned from them that the cattle in question were Bowen & Co.'s, and that Bowen & Co. were already indebted to Rappals for more than their value. On this information he relied in good faith, and was therefore fully justified in accepting that fragment of the sum in controversy, which alone could be affected by whatever notice the telegram might convey.

12. What was done after the money in controversy had been transferred to the appellant bank, is no part of this case; but appellees' counsel are mistaken in imagining that there is anything in it to throw doubt upon the good faith either of the bank or of the Rappals.

In the first place, the opening of a new bank account in the name of L. L. Rappal, trustee, could wrong nobody. The embarrassment of the elder Rappal through his unfortunate speculations, and the controversy in which the younger Rappals were not unlikely to be involved with the Gillespies, constituted no reason why they should not continue to serve those who might wish to employ them in selling cattle on commission; while they did constitute a reason for keeping the money to be received and used, clear of all danger of complication. There is no reason to believe that, apart from this disputed claim of Gillespies, Rappal, Sons & Co. remained in debt to anybody. Nobody connected with the bank could have been silly enough to imagine that the new arrangement affected one way or the other its rights arising out of past transactions.

The letter of the Kansas City bank, dated October 6, an extract from which is given on pp. 29 & 30 of Appellees' Brief, could not in the ordinary course of the mail (Appellant's Argument, pp. 132, 162), have been received by the Union Stock Yards bank until the 8th, on which day it was answered. The answer is perfectly truthful, and could have no tendency to mislead the Kansas City bank, though it is somewhat reserved, as common prudence would dictate so long as the *animus* of the inquiry was not clearly apparent. The evidence which we have

just discussed makes it perfectly plain that Rappals had no money in the bank. The view which appellees' counsel have chosen to take of this whole matter is strangely distorted, and has very little in common with the evidence.

Of the still later inquiries of the Kansas City bank, dated October 12 and 13, which are quoted on p. 30 of Appellees' Argument, the first indicates a disposition to investigate the affairs of the appellant bank, which fully justifies the omission to answer it in the absence of a full explanation of the motives which prompted the inquiry. As to the second, we think the court will recognize that there is much force in the view expressed by Cashier Conrad that the president of the Kansas City bank, being in Chicago when he sent the message, might better have come to the Union Stock-Yards bank himself, made a frank avowal of his motives and then received (so far as the appellant bank could give it) the full exposition of the affairs of Rappal, Sons & Co. which he somewhat impracticably asked to have sent him by telegraph.

But, we repeat, all these communications subsequent to the completion of the transactions in controversy, are immaterial to the question in hand.

VI.

The principle of law on which the right of the appellant bank to the money which Gillespies are seeking to get away from it, immovably rests, viz.: that the receiver of money or negotiable paper in payment of a debt, in the belief that it belongs to the person who gives it, acquires a title good against all the world, has been entirely overlooked by appellees' counsel, who have not a word to say on the decisions of this court and other tribunals of the highest authority which have been cited in support of this proposition and of the kindred doctrine of the banker's lien, on pp. 113-127 of Appellant's Argument.

Of the cases which they do cite in support of their contention that the appellant bank is not entitled to keep this money, some are decisions of courts of the State of New York declaring a peculiar doctrine on the rights of holders of negotiable paper, which has been expressly rejected by this court. Others bear only a remote analogy to the present case, while others still have nothing at all to do with it.

In *Pennell* v. *Deffel*, 4 De Gex, Macnaghten & Gordon, 372, there was no dispute with either of the depositary banks. (P. 383.) The controversy was entirely as to who was entitled to receive the balances which the banks were ready to pay.

The case of *Van Alen* v. *The American National Bank*, 52 N. Y., 1, is no more in point. There the bank asserted no lien on the deposit. The court say (page 10):

"The bank defendant has no lien upon this money and does not claim to have, and no claim is set up in the answer. Nor does it appear that any one else has. If Van Alen and Rice [the depositors] had given a lien for value upon this money, or had obtained a loan upon the apparent ownership of it in any way, the rights of the party holding the claim may have been superior to those of the plaintiff. No such claim is set up or shown. * * * The question is entirely between the plaintiff and Van Alen and Rice; the former claims the money and the latter admit the claim, and the facts sustain the justice of it. The defendant occupies the posi ion of objecting to the title of the plaintiff without having or claiming any title itself."

Knatchbull v. *Hallett*, Law Reports, 13 Chancery Div., 696, which, in its bearing on another question, has already been noticed on pages 102 to 104 of Appellant's Argument, has nothing to do with this branch of the case, no question having arisen as to the banker's lien or right of set-off.

Ex parte Kingston, Law Rep., 6 Chanc. Appeals, 632, has no bearing on any question involved in the present case. The decision was that where a customer had, besides his private account with the bank, two others designated respectively as Police Account and Superannuation Fund, and the bankers knew that he was county treasurer, they could not of their own motion apply credit balances on these two accounts, to make good overdrafts on his private account. This seems a truism, and Lord Justice JAMES introduces his decision with the remark (page

638): "This case has been argued with a courage, a "pertinacity and a learning which it has been melancholy, "in my judgment, to see thrown away upon a case so ut-"terly hopeless." We have had no idea of contending for any such power in a banker.

In *Pannell* v. *Hurley*, 2 Collyer's Chancery Reports, 241, Hurley and Whitter, bankers, were required by Vice Chancellor KNIGHT-BRUCE to refund, with interest, £308, which one Davy had to his credit as trustee of Pannell's estate (the account being headed, "Henry Pan-"nell's estate, per Joseph Davy, trustee,") and against which he drew checks as such trustee, and directed those checks to be placed to the credit of two accounts of his own, on which he was indebted to the bank. The decision was based on a finding that the bankers had direct knowledge of the trust. In argument it was said by complainant's counsel: "Independently of the heading "of the accounts, it is shown by the witness Leigh, that "they had direct notice of the trust." On which the Vice Chancellor remarked: "If the only notice to the bank-"ers had been the title of the account, this might have "been a case of more difficulty." (p. 243.)

In his decision the Vice Chancellor said (p. 244):

"Money is due from A to B, in trust for C. B is indebted to A on his own account. A, *with knowledge of the trust*, concurs with B in setting one debt against the other, which is done without C's consent. Can it be a question in equity whether such a transaction can stand? There is nothing more in the case than that. The debt of £300 and a fraction remains due from Hurley and Whitter to the trust estate."

Bodenham v. Hoskyns, 2 De Gex, Macnaghten & Gordon, 903, differs essentially from our case, in that the bankers were expressly informed beforehand that the money which the trustee Parkes transferred from the trust account to his own was not his, but belonged to the plaintiff Bodenham. And they not only knew that Parkes was taking Bodenham's money to make good his own private debt to the bank, but, according to their own avowal, they had previously stipulated with Parkes that they should have the right to require him to do so. It was upon this state of facts that Vice Chancellor KINDERSLY rested his decision. This decision is very fully reported in 21 Law Journal Reports, N. S. Chancery, 864. He says (p. 872):

"Now, whether the bankers in their own minds, or even in their own books, if the fact had been so, treated the Rotherwas account as if it had been the private account of Mr. Parkes, the question is whether they had a right to do so, whether they had a right to say—knowing from the facts that the money placed to that account was Mr. Bodenham's money, and that any balance standing to the credit of that account at any time was Mr. Bodenham's balance—that they could make such an arrangement with Mr. Parkes as that, at any time, they should be at liberty to appropriate the balance to the credit of that account, towards the liquidation of the balance of the debit standing to the private account of Mr. Parkes. It appears to me that, on every principle of equity, they had no right to do so; it appears to me that it is not a question whether simply, at the time when the check was drawn for the £829, they had a right then to allow that check to be placed to the credit of the other account, but whether they had a right ever to make an arrangement with Parkes to that effect; whether they had a right to say that the receiver should so deal with them as to make his principal's money at any time liable to be appropriated to discharge the private debts of the receiver to the bankers. I am quite satisfied that upon all principles of equity that could never be done."

Again (p. 873): "I am constrained to arrive at the conclusion that the bankers, although I must exonerate them from any deliberate intention to commit a robbery, or commit a fraud, still were not only parties to the simple fact of the transfer, but were parties to the fraud in question, in this sense, that they were aware of the circumstances which made it a fraud in Parkes to make the transfer to his private account, and being cognizant of that, and having been cognizant of it before the time when the account was opened under the name of 'The Rotherwas Account,' and being cognizant of it throughout, they concur in a transaction the effect of which is that, for their own pecuniary benefit an act is done by Parkes which is a fraud upon the plaintiff."

The Vice Chancellor thus finds the defendants guilty of little less than a fraudulent conspiracy to take the plaintiff's money for their own benefit. If he had not been satisfied of this, his view of the case would have been very different. He says (p. 869):

"I entirely agree with many of the observations that have been made by the counsel for the defendants, that as between banker and customer, in a naked case of banker and customer, the banker looks only to the customer in respect of the account opened in that customer's name; and whatever checks that customer chooses to draw the banker is to honor. *He is not to inquire for what purpose the customer opened the account; he is not to inquire what the moneys are that are paid into that account, and he is not to inquire for what purpose moneys are drawn out of that account;* that is the plain general rule as between banker and customer."

It is clear that the Vice Chancellor rested his decision in *Bodenham* v. *Hoskyns* explicitly on the very features in which it differed from our case—not upon any mere concurrence of circumstances which might suggest inquiry, but upon express knowledge of the rights of the third party and a definite intention to defraud him.

It is apparent that the Lord Justices of Appeal took a view at least as favorable to the general rights of bankers. In announcing the affirmance of the decree, Lord Justice KNIGHT BRUCE says (2 De Gex, Macnaughten & Gordon, 906):

"We are both of opinion that *if this case is to rest and be decided upon the present evidence*, the decision of the Vice Chancellor has done justice between the parties. But if the defendants should desire to add to the evidence, we think that their application for the purpose should be acceded to; and in the meantime we abstain from giving our reasons (which we are prepared to give) for the decision which, *as the case now stands*, we have come to."

This is a very strong intimation that if the defendants could vary the weight of evidence on the question of actual notice (as it would seem they had professed ability to do), a contrary decision might be reached. The facts already proved to be known to the defendants were evidently such that no amount of addition or explanation could make them otherwise than strongly suggestive of inquiry as to the depositor's right.

In the case of the *Overseers of the Poor* v. *The Bank of Virginia*, 2 Grattan, 547, the fund in controversy was the proceeds of a check on the Bank of Norfolk to the order of one Langhorne as attorney, and expressed to be given in payment of a judgment which had been recovered by the Overseers of the Poor. The Bank of Virginia claimed to apply the fund (or part of it) to the payment of a note of Langhorne's to the bank which fell due a few days after the making of this deposit. Besides what notice they got from the check itself, the officers of the bank were informed at the time of the

deposit that the Overseers of the Poor had recovered judgment to a considerable amount against the drawer of the check. The court held that the Overseers were entitled to recover from the bank the amount of the check "after deducting Langhorne's commissions."

They say (p. 551):

The title of the appellants to the credit in the bank necessarily overreaches the claim of the bank to set off against that credit the debt of Langhorne, that credit with the bank having in its creation imparted to the officers of the bank full and distinct notice that it arose from the debt of Cooke's estate to the appellants. On the face of the check collected by the bank, it was for money that Langhorne was to receive as the agent of the appellants. The appropriation of it by Langhorne to the payment of his private debt would have been a gross breach of trust; and the bank, or its officers, consenting to such appropriation, with full notice of the trust, would be participant in the breach of it and chargeable as if no such appropriation had been attempted.

(p. 548) The well settled principles of law entitle a principal in all cases where he can trace his property, whether it be in the hands of the agent or of his representatives or assignees, to reclaim it, *unless it has been transferred bona fide to a purchaser of it or assignee for value, without notice.*

Here the existence of "full and distinct notice," not mere matter for inquiry, is expressly mentioned as one of the grounds of the decision.

Frith v. *Cartland*, which has already been referred to on the question of equity jurisdiction, has, on the merits, no relevancy to the present case. There was there no one pretending to be a *bona fide* holder of the fund in controversy, by transfer for value from the defaulter. As to some parts, however, of the money which Edwards,

the defaulter, took away with him, and which he had paid out, (34 Law Journl. Rep. N. S. Equ., 302.) the declarations of the Vice Chancellor, Sir Wm. PAGE WOOD, are instructive as bearing on our case—the only parts of the decision which do so. He says (34 Law Journal Rep. N. S. Equity, 305):

"I apprehend that these funds were his in every sense that can be required for the purposes of the determination of a question of this kind. Questions may arise whether these funds have been properly dealt with; but these very payments made by him to his father-in-law and the solicitor, assuming them to have been made upon pressure in respect of debts due, are perfectly good and proper. He had the disposal of the fund; it is in his hands; he is applied to for payment; he makes the payment, and the payment is good. So, I apprehend, it would be impossible to recover from any inn-keeper to whom he had paid money on the road; the assignees cannot recover the money he has spent in defraying the expenses of his journey."

The decision in *Pozzell* v. *Jeffries*, 4 Scammon, 387, was as to what constitutes a *bona fide* purchaser of real estate. There is no allusion to the question of title to money or negotiable paper. *Dickinson* v. *Tillinghast*, 4 Paige, is cited in the opinion of the court as a similar case. Such ~~So~~ are *Wormley* v. *Wormley*, 8 Wheaton, 421; *Caldwell* v. *Carrington*, 9 Peters, 86, and the *Mayor of Baltimore* v. *Williams*, 6 Maryland, 235.

We shall not waste time by discussing either when there are so many authorities directly in point, though ignored by appellees' counsel.

VII.

The seventh proposition of Appellees' Brief (p. 34). that the money received by a commission merchant from his sales is held by him in trust for the consignor, is not law in this court, as we have shown on pages 97–106 of Appellant's Argument; and as to a commission merchant who regularly makes advances on consignments, there is very little authority for it anywhere.

In *Schudder* v. *Shiells*, 17 Howard's Practice Rep., 420, the New York Supreme Court took a view different from that which has been established in this court as to the fiduciary nature of a factor's obligation to pay to his principal the net proceeds of goods sold. But they were constrained to this by the language of the New York statute (Code of Procedure, § 179), which speaks expressly in this connection of "a factor, agent, broker, or other person in a fiduciary capacity." Moreover not only had the factor in the case before the New York court made no advances; but there is nothing to indicate that he made a practice of doing so; which clearly distinguishes that case from the present.

The doctrine affirmed in the case of the *Chesterfield Manufacturing Co.* v. *Dehon*, 5 Pickering, 7, is simply that accounts and notes, the proceeds of goods consigned to a factor who was also a general merchant, do not pass by his assignment to a trustee for the benefit of creditors, but remain the property (subject to any lien

the factor may have) of the consignor. The court do not say, or intimate, that if the factor had collected the money on an account or note, and had used it to pay a debt of his own to some person other than the consignor, the person who had received such payment could be required to refund. On the contrary, they do say (p. 10):

"No doubt the factor may by breach of trust, or even with the implied assent of consignors, transfer the notes, or have them discounted to raise money, and innocent indorsees will hold them against the consignors; but while they remain in his hands, or in the hands of his trustees" [such as an assignee for the benefit of creditors] "as in the case before us, the consignees may assert their right, either against the trustees, or the purchasers of the goods if they have not made payment."

The court evidently had in mind an actual trustee, and there is nothing to intimate that they meant to include in the term a creditor who had received payment from the factor.

Vail v. *Mitchell's Administrators*, 4 Washington, 105, is virtually a parallel case to the *Chesterfield Manufacturing Co.* v. *Dehon*.

In the case of *Merrill* v. *The Bank of Norfolk*, 19 Pickering, 32, which has been already discussed in our Argument in chief (p. 27) in connection with the question of jurisdiction, Lamson, the factor, had turned over to his principals the note in question, and had procured the discounting of it at the bank at their request and with the intent that it should be entirely for their benefit, though the messenger whom he sent with the note to the bank omitted to mention them and mistakenly said that the accommodation was desired for the benefit of the factor him-

self. The placing of the proceeds to the factor's credit was a mere mistake or oversight; and as nobody had given any sort of consideration on the faith of the error, the court justly held that the money was not attachable by a stranger for the factor's debt. The bank made no claim on its own account.

Hogan v. *Shorb*, 24 Wendell, 458; *Moore* v. *Clementson*, 2 Campbell, 22; *Baring* v. *Corrie*, 2 Barnw. & Alderson, 137, and *Fish* v. *Kempton*, 7 Manning, Granger & Scott, 687, are all cases in which the question was as to the right of one *purchasing goods* from a broker or factor to set off against the price a personal debt of the broker or factor to himself. They have no relevancy to our case of a *receipt of money on deposit* from a factor.

The business of Rappal, Sons & Co. being what it was, the presumption would have been that any cattle in their hands were there only for the purpose of sale for money. But their business being what it was, largely that of making advances on cattle before selling them, there was no such presumption with regard to what money they might have. The probability would be that at least the greater part of it was in every sense their own. Especially had the appellant bank the right to presume so, when it had made a regular practice for several years of loaning them money to make just such advances, with the understanding that it should be repaid out of the proceeds of the cattle when sold.

In expressing their gratification that justice and equity have so evidently been done by the decree appealed from

appellees' counsel overlook, as throughout their argument they have overlooked, the unquestioned fact that under the settlement which the decree seeks to disturb, Gillespies have received for the whole series of consignments of cattle of which they pretend to be the owners some $2,000 more than the net amount realized by Rappals. They do not explain, either, wherein the equity of a creditor who has loaned money for the purpose of advancing on consignments more than they proved to be worth, is inferior to that of one who has all along been receiving the money so advanced. And when they talk of comparative negligence, they forget that if Gillespies had faithfully performed the duty which they undertook, and were paid for, of keeping the accounts of Bowen & Co.'s business, and what was a necessary incident thereto; of reporting its condition from time to time, the elder Rappal and his associates at Kansas City would have been warned in time to prevent their losses mounting to that magnitude without which the present complication never would have arisen.

EDWARD O. BROWN,
Counsel for Appellant.

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No. 79

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D., 189

THE UNION STOCK YARDS NATIONAL BANK, ET AL.,
APPELLANT,

vs.

A. J. GILLESPIE, ET AL.,
APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS.

Brief of Appellees.

L. H. BISBEE,
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Supreme Court of the United States,

OCTOBER TERM, 1887.

UNION STOCK YARDS NATIONAL BANK,
APPELLANT,

vs.

A. J. GILLESPIE, THOMAS E. GILLESPIE, AND LOUIS J. GILLESPIE, DOING BUSINESS AS A. J. GILLESPIE & CO.,
APPELLEES.

Brief on Behalf of Appellee.

STATEMENT.

This is an appeal from a decree of the United States Circuit Court for the Northern District of Illinois, rendered on the 25th day of May, 1887, in favor of the appellees, decreeing that the appellant pay appellees the sum of $26,585.90 for money deposited with them by Rappal Sons & Company, livestock commission merchants at the Union Stock Yards in Chicago, proceeds of cattle consigned by appellees to Rappal Sons & Company for sale and sold by them, which proceeds were deposited by said Rappal Sons & Company in said Bank to their own credit. (Record 61-62.)

The bill sets up that the complainants are citizens of the State of Missouri and the defendant, the Union Stock Yards National Bank, is a corporation, organized under the laws of the United States, and located at the Union Stock Yards in the Town of Lake, Cook County, Illinois; that complainants were, on the 1st day of October, 1885, the owners of 1,065 head of cattle, and thereupon shipped the same to Rappal Sons & Company, commission merchants at the Union Stock Yards in Chicago, to be by them sold for the account of the complainants, and the proceeds thereof to be held by said Rappal Sons & Company, subject to the order of complainants, and that it thereupon became the duty of said Rappal Sons & Company to sell said cattle for the account of complainants, at the Union Stock Yards aforesaid, and after deducting freights advanced by them and

expenses, and their commissions, to hold the proceeds subject to the complainants' order, or to deliver the same to complainants; that on the 2nd day of October, 1885, said Rappal Sons & Company sold at the Union Stock Yards aforesaid, for the account of complainants, 133 head of said cattle for $6,649.50, and that the net proceeds of such sale, after all proper deductions were made, amounted to $5,880.25, which the said Rappal Sons & Company, without the knowledge or consent of complainants, on that day deposited in the said Union Stock Yards National Bank, for their own account and credit; that afterwards, on the 3rd day of October, 1885, the said Rappal Sons & Company sold of said cattle, for the account of complainants, 810 head of said cattle, for the sum of $20,547.33, and that the net proceeds thereof, after making all proper deductions, were $16,519.69, which the said Rappal Sons & Company on said day, and without the consent or knowledge of complainants, deposited in the same bank for their own account and credit; that afterwards, on or about the 6th day of October, 1885, the said Rappal Sons & Company sold of said cattle 122 head, for the sum of $2,568.52, the net proceeds of which, after all proper deductions, amounted to $1,857.27, which the said Rappal Sons & Company on that day, without the consent or knowledge of complainants, deposited in the same bank to their own account and credit; the total amount of moneys so deposited aggregating $24,257.21, which the complainants claim was their money, the proceeds of their cattle shipped as aforesaid.

The complainants further set up that on the 30th day of September they drew on Rappal Sons & Company for the sum of $6,231.10, in anticipation of proceeds of said sales, and caused a draft to be sent to the said Union Stock Yards National Bank for collection, which reached said Bank before any of said cattle were sold; and afterwards, on the 1st day of October, 1885, drew a further draft upon said Rappal Sons & Company, on account of the proceeds of said sales of cattle, for the sum of $19,505.62, which was also sent to the Union Stock Yards National Bank for collection, and reached said Bank before any of said cattle were sold; that afterwards, on the 3rd day of October, 1885, complainants drew a further draft on said Rappal Sons & Company, on account of the proceeds of said sale, which draft was also sent to said Union Stock Yards National Bank for collection, and reached said Bank before the last bunch of said cattle were sold, and no part of the said drafts were paid, but were all returned protested, upon the direction of said Union Stock Yards National Bank; that said Bank had notice that the moneys so deposited were not the moneys of Rappal Sons & Company, but were the moneys of complainants, on account of which said drafts were drawn; that the said Bank knew at the time said proceeds were placed to the credit of Rappal Sons & Company that said moneys placed to the credit of Rappal Sons & Company were the moneys of complainants; but that they held the same on account of

over-drafts or other indebtedness claimed by said bank to be due to it from said Rappal Sons & Company; that after the return of said drafts protested, complainants notified the Union Stock Yards National Bank that the moneys deposited as aforesaid were the moneys of complainants, and that Rappal Sons & Company had no interest in them, and also served upon the said Bank a written notice, explaining to the Bank how the moneys were received by Rappal Sons & Company, and demanded the payment of the moneys so deposited in said Bank to the complainants; but that the said Bank refused to pay said money or any of it to complainants, and claims the right to hold the same for its own use.

The bill charges and claims that the same Union Stock Yards National Bank holds said money in trust for complainants, and ought in good conscience to pay it to the complainants, and asks the court to decree that the said Bank is a trustee holding said moneys in trust for the benefit of the complainants, and that said Bank be adjudged and decreed to pay the entire amount to complainants, etc. (Record 3-10.)

The case was heard on bill, answer, replication and voluminous evidence, by Hon. Walter Q. Gresham, by whose order the decree appealed from was entered.

Upon the decision of the case, Judge Gresham delivered an Opinion, containing a sufficiently full statement of the facts and questions involved in the case, and we here insert the same:

"OPINION.

"Gillespie, et al.
"vs.
"Union Stock Yards National Bank, et al.

"Hon. Walter Q. Gresham delivered the opinion of the Court.
"May 20, 1887.

"A. J. Gillespie, Louis J. Gillespie and T. E. Gillespie, under "the firm name of A. J. Gillespie & Co., were doing business as "livestock commission merchants at Kansas City. They brought "this suit in equity to recover the net proceeds of three consign-"ments of cattle shipped by them from Kansas City to F. J. Rappal "Sons & Co., at Chicago; Rappal, Sr., selected the cattle at Kansas "City, caused them to be weighed, presented the weight tickets to "Gillespie & Co., who paid for and shipped the cattle to Chicago. "Two of the Gillespies swore that the contract with the senior Rap-"pal was that Gillespie & Co. should ship the cattle as their own; "and have control of them until sold at Chicago and paid for. In "this they were fully corroborated by the witness James. The "senior Rappal on the other hand, swore that such was not the ar-"rangement; that the agreement was that the Gillespies should "furnish the money for the purchase of the cattle, which they did, "and ship them as the property of Bowen & Co.; and that Gil-

"lespies should receive a specific amount per car for their advance-
"ments and trouble.

"True, Rappal's two sons swore that the contract was as their
"father testified: but they admitted that all they knew of the
"agreement was what their father had told them.

"Thus on this point there is a square conflict between the two
"Gillespies, and James on one side, and the senior Rappal on the
"other. The weight of the evidence on this point is against the
"senior Rappal, and his statement is improbable. It is hard to be-
"lieve that Gillespie & Co. would furnish such large sums of money
"without any security: for that is what they did if they had not
"the right to control the cattle until they were sold. It is not
"claimed that the Gillespies had any security whatever for these
"large advancements, unless the cattle were to be theirs, or they
"had authority to control them until they were disposed of.

"I hold that the cattle belonged to the Gillespies, or that the
"Gillespies were entitled to control them so far as necessary to
"protect themselves for advancements made on the purchases.

"The first shipment arrived in Chicago on Friday morning. Gil-
"lespie & Co. drew against this shipment, and the draft was dis-
"counted by the Kansas City Bank. The Gillespies also drew
"against the two shipments, and these drafts were also discounted
"by the Kansas City Bank. This bank sent all the drafts to the
"Union Stock Yards Bank for collection. The draft drawn against
"the first shipment was received by the Union Stock Yards Bank
"before, or certainly as soon as the cattle were received.

"This draft was presented to the Rappals for payment: payment
"was refused, and the draft was protested. This was on Friday.
"No notice was given of this failure to pay for the first shipment,
"or of the protest of the draft, for at least twenty-four hours, per-
"haps more.

"The cattle were received here by the Stock Yards Company,
"they having been consigned to that company. By the weight
"bills, the consignee was directed to deliver the cattle to the Rap-
"pals, who received them and sold them at the Stock Yards. As
"was usual, the cattle were weighed, and the Rappals furnished
"with tickets showing the weight and price.

"These tickets Rappal Sons & Co. delivered to the Stock Yards
"Bank for collection. The Bank made the collections and placed
"the amounts to the credit of Rappal Sons & Co., who at this time
"were indebted to the Bank on a past due note, and for overdrafts.
"The Bank then claimed against Gillespie & Co. that it had appro-
"priated this money as a credit on the indebtedness of Rappal
"Sons & Co.

"A bank has a lien on the securities or funds of a depositor to
"the extent of any amount owing from him to the Bank, for over-
"drafts, past due notes, or in other ways: but this is true only of
"funds which belong to the depositor or debtor.

"The Stock Yards Bank was familiar with the mode of doing "business at the Stock Yards. It knew that Rappal Sons & Co. "were engaged in receiving cattle from shippers, and selling them "at Chicago. When the Bank received the ticket for the first ship- "ment (and the other shipments were disposed of in the same way) "showing the weight and price, it knew, of course, that the money "called for by that ticket represented cattle that someone had ship- "ped to Rappal Sons & Co. for sale. If the Bank did not know "this, the facts fairly put it upon inquiry, and it could and should "have ascertained whether Rappal Sons & Co. owned the cattle and "the proceeds of their sale before appropriating them.

"Furthermore, the failure or refusal of Rappal Sons & Co. to "pay the first draft—the Bank knowing the business in which they "were engaged—was notice to the Bank that this firm was probably "behind with some shipper, if indeed it did not know the shipper "was Gillespie & Co.

"Rappal Sons & Co. being indebted to the Bank for over-drafts "and on past due notes at the time the first draft was presented and "protested for non-payment, it is safe to assume that the officers of "the Bank then did what business men would be expected to do "under such circumstances. How natural that they should then "say to Rappal Sons & Co., 'We want to know what this means. "'You are indebted to us; explain this thing. Who shipped the "'cattle against which this draft was drawn? Under what circum- "'stance were they shipped to you? Is this your money, or is it the "'money of some one else?'

"But as already stated it is not material whether at the time the "Bank claims to have appropriated the money it actually knew the "relation that existed between Rappal Sons & Co. and Gillespie & "Co., for it knew too much to be permitted to make the appropria- "tion as against Gillespie & Co. who paid for the cattle and shipped "them under the agreement already stated.

"In view of Rappal Sons & Co.'s indebtedness to the Bank, here "it is significent to say the least that it delayed for 24 hours or "more to notify the bank at Kansas City which had discounted the "first draft, and sent it to the bank here for collection, that the "draft had been protested for non-payment.

"The evidence shows that previously, the bank here had never "failed to send to the Kansas City Bank prompt notice by telegraph "of failure or refusal to pay any draft which the latter had sent "here for collection. This was the first failure on the part of the "bank here, to send immediate notice by telegraph to the Kansas "City Bank in accordance with the latter's instructions.

"The necessity for such notice was obvious. A draft was usually "drawn against each shipment of cattle at Kansas City, and this "draft was discounted by the bank there, and sent to the bank "here for collection. Prompt notice by telegraph to the Kansas "City Bank of non-payment would afford the latter bank, and the

VI.

The bank had not parted with any of these funds, nor had it taken any steps to its prejudice on the faith of them, at the time they had specific notice that these funds belonged to appellees, and the bank could not hold them by virtue of a general lien for overdrafts, which had existed for several days, prior to the deposits; so that the bank is liable whether there was sufficient or not prior to the specific notice to put the bank on inquiry.

Mere application of deposits on preexisting debt is not sufficient to entitle the bank to the defense of bona fide purchaser.

Dickinson v. Tillinghas, 4 Paige, 221.
Codington v. Bay, 20 N. J., 637.
Russel v. Norsworth, 2 Lead., Cases in Eq., 103.
Van Allen v. Am. N. B., 52 N. Y., 1.
Nichols v. Martin, 35 Hund, 168.
Powell et al v. Jeffries, 4 Scam. (Ill.), 387.

VII.

The cattle belonging to appellees, the proceeds derived therefrom became trust funds in the hands of Rapp & Sons & Co., and were held by them in trust for appellees.

Schnidder v. Schells, 17 How. Pr., 420.
Du Guid v. Edwards, 50 Barb., 289.
C. Manfg. Co. v. Dihon, 5 Pick, 7.
Merrill v. Bank Norfolk, 19 Pick, 32.

VIII.

The trust followed these proceeds into the hands of the bank, which under the facts was bound by the trust and liable in equity to account for it to the appellees.

C. Manfg. Co. v. Dihon, 5 Pick., 7.
Merrill v. Bank of Norfolk, 19 Pick., 32.
Pannell v. Hurley, 2 Co. Ch. Cas., 241.
Bodenham v. Hoskyns, 2 De. G. M. & G., 905.
Pannell v. Duffel, 4 De. M. & G., 372.
Frith v. Cartlan, 2 H. & M., 419.
Ex Parte Kingston L. R., 6 Ch. App., 696.
In Re Halletts Est. 13 Ch. D., 696.
Poor v. Bank of Va., 2 Gratt, 547.
Wormsley v. Wormsley, 8 Wheat, 421.

ARGUMENT.

I. Jurisdiction in Equity.

The appellees contend that in any case where money held in trust for another has passed into the hands of a third party who has not expressly agreed to account for the money as a trust fund, a bill in equity will lie in behalf of the *cestui que trust* against the third

party, into whose hands the trust fund has come, to compel such person to account for the money, on the ground of a constructive trust which equity will declare and enforce.

One of the grounds of equitable jurisdiction in such cases is that there is no such privity between the *cestui que trust* and the party who has received the trust funds, as will sustain an action at law. The principal authority on which the bill in this case was filed is the case of *National Bank v. Life Insurance Company, 104th U. S., 54.*

The English cases bearing upon the question are carefully examined in the opinion in that case; also some leading cases in American Courts, and it seems to be settled so far as this Court is concerned, that in cases like the one at bar the Court will take jurisdiction in equity and give the proper ruling.

The jurisdiction in equity in that case seems to have been based mainly upon the fact that there was no privity between the bank where the deposit was made and the *cestui que trust* who claimed the fund. Although as between a banker and a depositor the balance due on the account is only a debt, yet, as said in that case, if the money deposited belonged to a third person and was held by the depositor in a fiduciary capacity, its character is not changed by being placed to his credit in his bank account. That a *cestui que trust* may trace funds or property held in trust for him by a trustee into the hands of a third party, affected with notice, and reach that fund by a bill in equity, is well settled.

Where the action is direct, between the *cestui que trust* and the trustee, the common law remedy seems to be considered as complete, and even though the fund was a trust fund and equity has jurisdiction in matters of trusts, the party will be required to seek his remedy at law. This, however, has never been held in any case where the trust had passed into the hands of a third person, who had not agreed expressly or impliedly to hold the subject of the trust for the benefit of the *cestui que trust.*

The distinction between cases of trust and where equity will take jurisdiction, and where it will not because there is a remedy at law, is very clearly explained by Mr. Pomroy in his work on equity Jurisprudence at Section 128, Vol. 1.

"In cases (he says) where the remedy is a mere recovery of money and the legal remedy would be complete, sufficient and certain, a concurrent jurisdiction of equity will not be maintained, even to recover money held in trust." This doctrine he applies to that class of cases where the right of recovery is based upon the violation, of a contract creating the trust.

In all cases however where a trust fund has passed from the hands of the trustee, and the *cestui que trust* seeks to impress such fund with the trust in the hands of a third party, the same author lays down the rule to be that a Court of equity will take jurisdiction, and that it suits to recover a fund impressed with a trust by

construction in equity, jurisdiction will be taken in equity even though an action of assumpsit might lie.

It may be questionable whether an action of assumpsit would lie in this Court in any such case, but in all cases of the kind just indicated it is clear that equity will take jurisdiction. The authorities to this effect are numerous. (See cases cited under this head, and especially Varet v. N. Y. Ins. Co., 7 Page, 560; Kirkpatrick v. McDonald, 11 Pa. State, 387; New York Ins. Co. v. Raulet, 24th Wendall, 505.)

It seems to us very clear that the question of the right to maintain this bill so far as jurisdictional grounds are concerned, is a settled question in this Court; but it was seriously contended in the Court below that the case of *National Bank v. Life Insurance Company Supra* was distinguishable from the case at bar in two principal particulars:

First—In that the moneys were deposited in the bank in that case with the full knowledge of the Insurance Company who were seeking to recover the same, whereas in the case at bar the deposit was without the consent of the appellees.

Second—In that the agent in that case opposed the application of the deposit by way of set-off upon a debt due from him to the bank; whereas in the case at bar Rappal Sons & Company were consenting to the set-off.

It is impossible to see that these circumstances in any respect distinguish the cases. If these circumstances are to be considered as of any force at all, they make the case at bar stronger in its equities than the National Bank v. Insurance Co. case.

It was contended however in the Court below that since the case made on the bill was that the deposit in the bank was without the consent of the complainants, and since the application was attempted to be made of this fund to pay the over-drafts of Rappal Sons & Company by their consent, the case was really one of larceny or embezzlement on the part of Rappal Sons & Company, and if the bank took the money with notice, they were receivers of stolen property, and therefore an action at law would lie. Whether such an argument will be urged before this Court, we do not know.

By way of anticipation, however, we suggest that even if such was the character of the transaction, jurisdiction in equity would not be affected thereby. This is not a case in which specific *chattels* can be followed, but a case in which money has been deposited and mixed up with moneys of the depositor, and in which the depositing of the money in the bank was not in any sense an embezzlement, and only became a fraud by the attempted misapplication.

In every case where jurisdiction in equity has been taken, notice has been proved as against the party receiving the trust, and in every case the parting with the trust fund was in violation of the trust, and yet it was not thought that an action at law would lie, for those reasons, or that jurisdiction in equity was affected thereby.

If the argument urged in this regard is sound, then the cases holding jurisdiction in equity, notwithstanding those circumstances are so numerous, that the question of jurisdiction is settled and must stand on the principle of *stare decisis* whether defensible by sound reason or not; but this position is altogether unsound, because it is a question to be inquired into as to whom, in equity, this fund belonged and because the fund is made up of moneys that have no ear mark, but which can nevertheless be traced on principles of equity.

The principles and distinctions which we contend for as supporting the jurisdiction in equity are held in numerous cases, to some of which we call especial attention, for purpose of illustration.

In *Sims, et al, v. Brittain, et al, 4th B. & A., 375*, A. B. and others were owners of a ship in the service of the East India Company. "B" was managing owner and employed "C" as his agent for general purposes, amongst others to receive and pay moneys on account of the ship. Upon a receipt signed by "B" and one of the other owners, "A" received on account of the ship 2,000 pounds, and places it to "B's" credit as managing owner in "C's" book, "C" being "B's" banker. It was held that "C," as the banker of "B," had received the money as such and was accountable to "B" for it in law. The Court held that there was no privity between "C" as the banker of "B" and the other part owners of the ship, and hence a common law action would not lie.

In the case of *Williams v. Everett, 14th East, 542*, "B" residing abroad remitted bills to "X" & Co., his bankers in London, with directions to pay amount of bills in certain portions to "A" and other creditors of "B." "X" & Co. refused to act upon these instructions, and although they received the amount due on the bill, they did not pay "A." It was held that no action at law could be sustained by "A" against "X" & Co.

Since the defendants never assented to hold the money for the use of "A," it was considered that by *implication of law* they held it for the use of "B."

So again in *Yates v. Bell, 3 B. & Ald. 643*, "B.," acceptor of a bill of exchange which had been dishonored, transmitted to "X" another bill, the proceeds of which were to be employed in paying the dishonored bill. It was held that the holder of the dishonored bill could not maintain an action at law against "X," because "X" had not agreed with the holder of the bill to hold for his use the amount of the second bill.

These are cited to illustrate a large class of cases bearing upon questions of privity as a necessary element in an action at law, and this class of cases has been approved expressly by this Court, as settling the doctrine that an action at law cannot be maintained in any case where money has been received by a party who ought not in good conscience to retain it, but who has not promised expressly or impliedly to account for it to the real owner, or to any third per-

son. It is said that there is an exception where the case is such that the real party in interest to the fund may maintain an action of trespass or trover and may in such case wave the tort and maintain an action for money had and received. Such cases are referred to in 1st Chitty's Pleading, 112, Perkins, 16th American Edition. These cases are not really exceptions. They stand upon altogether different principles. No action of trespass or trover could be maintained with regard to money deposits.

Upon a careful analysis it will be found that there are really no exceptions to the rule that an action at law cannot be maintained where there is no privity between the parties and where money funds are sought to be reached. The apparent exceptions are cases where *chattels* have been transferred by a trustee in violation of his trust to some person who has received the same with notice, and who upon demand has refused to deliver the same to the real owner. In such cases it has been held that the real owner may waive the tort and bring an action for money had and received.

There are some cases also where as to moneys in the hands of a third party, a remedy at law has been afforded; but in every such case it will be found that the person receiving the money had received it under circumstances that raised an *implied promise*. Such a case was *Hall v. Marston, 17th Mass. 578*. In this case "A," being a debtor of "B," in the sum of $1,300.00, and also of "C" in the sum of $400.00, and being abroad, remitted to "B" a bill of exchange for $1,000.00, with directions that from the proceeds he should pay "C" the sum of $200.00 at its maturity. "B" received payment of the bill, but neglected to pay "C" as directed and gave him no notice of the remittance. It was held in that case that "B" was liable to "C" for the $200.00 in an action for money had and received, on the ground that "*B" was to be considered as having accepted an agency and to have undertaken to perform what was requested of him in the letter enclosing the bill.* A case of this kind very clearly illustrates the force of the general rule.

The following cases illustrate more directly the grounds upon which equity has taken jurisdiction in cases where a trust in the form of money has passed into the hands of the third person.

In *Pannell v. Hurley, (1845), 2nd Col. C. C. 241*, Pannell executed a conveyance of his real and personal estate to three trustees, Clark, Bussell and Davie. The trustees soon after opened an account with Skinner, Brown & Company, Bankers, which was headed: Pannell Estate—Clark, Bussell & Davie. Davie being indebted to the bank on his own account in the sum of 71 pounds and upwards, and on joint account of himself and others in the sum of 250 pounds and upwards, and having 308 pounds and 12 shillings standing to his credit on the trust account, drew two checks against the account for the respective sums, and directed those checks to be placed to the credit of the two other accounts. A bill was filed for each of these sums by Pannell and his creditors

against the Bankers, and they were adjudged to pay the amount of those checks back to the trust estate.

In the case of *Bodenham v. Hoskyns, 2nd De G. M. N. & G. 903*, one Parks as agent and Receiver for an Estate, opened an account with the bank in the name of the Estate. He also had an account with the same bank in his own name. Parks drew a check for 829 pounds and afterwards, upon a trust account, deposited it in the bank to the credit of his own private account, and afterwards overdrew his personal account and became insolvent. The persons interested in the estate filed a bill and the Court adjudged that the banker pay back the amount so transferred to the private estate of Parks.

In the case of *Pannell v. Deffel, 4th De. M. & G. 372* Green, an official assignee in bankruptcy, opened an account with the Bank of England in his own name, in which he deposited all moneys received by him, whether as assignee or on his own private account. He also kept a similar account with the London Joint Stock Banking Company, each account being in his own name. He died leaving a considerable balance in each of said banks to his credit, and it was alleged against his executors and disputed by them that the greater part of these funds belonged to his trust, and his successor in office filed a bill against the executors, which was maintained. The Chancellor in decreeing in favor of complainant says: "It is, I apprehend, an undoubted principle of this court, that as between *cestui que trust* and trustee, and all parties claiming under the trustee otherwise than by purchase for valuable consideration, without notice, all property belonging to the trust, however much it may be changed or altered in its nature or character, and all the fruit of such property, whether in original or altered state, continues to be subject to or affected by the trust."

In the case of *Frith v. Cartlan, 2nd H. & M. 419*, the plaintiff had endorsed certain bills to one Edwards, who converted them into cash and mixed the money with his own.

A bill was filed to trace the funds and sustained.

There are numerous cases holding similar doctrines some of which have been cited under our 1st point, but we do not think it necessary to extend comment, because no case can be found where equity has refused to take jurisdiction to reach a money fund, which without the consent of the *cestui que trust* has been transferred by the trustee to another.

II.

The allegations of the bill to the effect that $24,257.21 deposited in the appellant bank in various amounts from the 2nd to the 6th of October, 1885, inclusive, by Rappal Sons & Company to their own account, were the proceeds of cattle consigned to them as commission merchants for sale at the Union Stock Yards, Chicago, Ills., by the appellees, and for their account, are established beyond controversy.

Whatever may have been the arrangement under which A. J. Gillespie & Co. paid for the cattle in controversy, it cannot be fairly claimed that there is any real controversy in the record over the fact that upon paying for these cattle they were turned over to A. J. Gillespie & Co., and by them shipped to Chicago and delivered to Rappal Sons & Company as commission merchants, and that the proceeds were deposited by them in the appellant bank, the cattle were, in fact contracted for by F. J. Rappal, Sr., either on his own account, or on account of himself and Bowen James, who, according to the claim of defendants, constitute the firm of Bowen & Co., or on account of Rappal, Sons & Co., but whatever may be the fact in this regard, the cattle when contracted for were paid for by A. J. Gillespie & Co., under some arrangement with F. J. Rappal, Sr. What that arrangement was, we will discuss under the next head.

It is not denied that under the arrangement, whatever it was, weight bills of the cattle were delivered to A. J. Gillespie & Co., and upon them A. J. Gillespie & Co. paid for the cattle and received an order on the Union Stock Yards & Transit Co. of Chicago, to which corporation the cattle were consigned, according to the custom of business, which order was endorsed by A. J. Gillespie & Co. and transmitted to F. J. Rappal Sons & Company for the purpose of turning the cattle into their hands as commission merchants, for sale for the account of A. J. Gillespie & Company, to the extent of the purchase money paid by them for which they drew drafts and notified F. J. Rappal Sons & Company.

T. E. Gillespie (Record 222) speaking of the first bunch of cattle (133 head) testified that they owned the cattle; that they were in the possession of A. J. Gillespie & Company; that they drew a draft, which is Exhibit D., (Record 604) on Rappal Sons & Company for the cattle, and shipped them to Chicago, consigned to Rappal Sons & Company, to be sold on commission; that they bought these cattle from A. J. Snider & Company on the 30th of September, 1885, at a net cost of $6,226.40; that they shipped them to Chicago on a rate bill to Snider & Company, to be turned over to Rappal Sons & Co. for sale, and drew against them the amount of the draft, (Exhibit B), $6,231.10, which was arrived at by deducting from the original cost, ($6,506.40), the back freight, amounting to $280.00, and adding $4.70 exchange.

He says, speaking of the bunch of 815 head of cattle (Record 235) that on the first of October, 1885, they bought 35 cars of cattle from Snider & Company and Quinlan, Montgomery & Company, 375 heads being from Snider & Company and 440 from Quinlan, Montgomery & Company, the net cost being $19,491.02, and with exchange added, ($14.60), making $19,505.62, for which they drew their draft on Rappal, Sons & Company, and shipped the same to Rappal Sons & Company to be sold for the account of A. J. Gillespie & Company, like the other bunch of cattle.

He likewise testifies to the purchase of 121 head of cattle, giving a check in a similar way for $929.67. (Record 227 to 229), and that they were shipped in a similar way to Rappal Sons & Company for sale on commission, for the account of A. J. Gillespie & Company. All this testimony is corroborated by the testimony of A. J. Gillespie. (Record 293 to 297). The drafts drawn on Rappal, Sons & Company for the proceeds of these cattle are shown in exhibits D. E. & F. (Record 604 to 608).

The orders received by A. J. Gillespie & Company upon the purchase of these cattle, and upon the endorsement of which the cattle were turned over to Rappal Sons & Company, as commission merchants, for sale for the account of A. J. Gillespie & Company, were produced by George T. Williams, Secretary and Treasurer of the Union Stock Yards and Transit Company.

To illustrate in this connection the method by which the consignments were made, we here insert the orders relating to the cattle in controversy, by which it will appear that A. J. Gillespie & Company took the cattle into their possession and control and consigned them as they claim.

First Lot.

"Office of Andy J. Snider & Co.

STOCK YARDS, KANSAS CITY, Mo., Sept. 29, 1885.

Union Stock Yards & Transit Co., U. S. Yards, Ill:

Please deliver to A. J. Gillespie & Co. 1 car cattle shipped via Han. & St. Jo. R. R., consigned from Barfott to us.

Yours truly, A. J. SNIDER, & CO."

Endorsed on the back is the following: "Deliver to Rappal Sons & Co. A. J. Gillespie & Co. Rappal Sons & Co. J. C."

"Office of Andy J. Snider & Co.

STOCK YARDS, KANSAS CITY, Mo., Sept. 30, 1885.

Union Stock Yards & Transit Co., U. S. Yards, Ill.

Please deliver to A. J. Gillespie & Co. 7 cars cattle shipped via C. & A. R. R., consigned from Drumm to us.

Yours truly, A. J. SNIDER & CO."

On the back is the following: "Deliver to Rappal Sons & Company. A. J. Snider & Co. Rappal Sons & Company. J. H. Rappal."

Second Lot.

"Office of Andy J. Snider & Co.

STOCK YARDS, KANSAS CITY, Mo., Oct. 1st, 1885.

Union Stock Yards & Transit Co., U. S. Yards, Ills:

Please deliver to A. J. Gillespie & Co. 16 cars cattle shipped via Han. & St. Jo. R. R., consigned from H. C. Co. to us.

Yours truly, HANAFORD C. CO."

Endorsed on the back is the following: "Deliver to Rappal Sons & Co. A. J. Gillespie & Co. Rappal Sons & Co. J. C."

"Office of Quinlan, Montgomery & Co.
STOCK YARDS, KANSAS CITY, MO., Oct. 4st, 1885.
The Union Stock Yards & Transit Co., U. S. Yards, Ills:
Please deliver to A. J. Gillespie & Co. 21 cars cattle shipped via. ——R. R., consigned S. M. to us.
Your truly QUINLAN, MONTGOMERY & CO."

On the back is endorsed the following: "Deliver to Rappal Sons & Co. A. J. Gillespie & Co. Rappal Sons & Co. T. Chittek."

Third Lot.

"Office of Andy J. Snider & Co.
STOCK YARDS, KANSAS CITY, MO., Oct. 3, 1885.
The Union Stock Yards & Transit Co., U. S. Yards, Ills:
Please deliver to A. J. Gillespie & Co. 1 car cattle shipped via. Han."
Yours truly. A. J. SNIDER & CO.

Endorsed on the back is the following: "Deliver to Rappal Sons & Co. A. J. Gillespie & Co. Rappal Sons & Co. Chittek."

KANSAS CITY, MO. Oct. 3, 1885.
The Union Stock Yards & Transit Company, U. S. Yards, Ills.
Please deliver to A. J. Gillespie & Co. 4 cars cattle consigned from Shelby & Fulkerson to us by C. B. & Q. R. R.
MOUNTJOY, WHITE & CO."

Deliver above cattle to Rappal Sons. A. J. Gillespie & Co."
Endorsed on the back is the following: Rappal Sons & Co." (Record 122, 123, 126 to 8.)

Mr. Williams testifies that under these orders he delivered the cattle in question to Rappal Sons & Company, and took up these orders from them. (Record 127 to 129).

Rappal Sons & Company for these various lots of cattle rendered accounts of sale to A. J. Gillespie & Company.

The first account of sale is dated October 2, 1885, and shows the sale of 133 cattle for account of A. J. Gillespie & Company. The net proceeds are $5,880.25. (See Exhibit A., Record 601).

The second account of sale is dated October 3d, and is rendered from Rappal Sons & Company to A. J. Gillespie & Company, and is an account sales of 819 cattle for account of A. J. Gillespie & Company, and shows net proceeds $16,549.69. (Exhibit B. Rec. 602).

The next account sales is dated October 6th, 1885, and is of the last lot of cattle. It shows sale for account of A. J. Gillespie & Company, and net proceeds $1,857.27. (Ex. C. Rec. 603).

Frederick J. Rappal, Jr. testifies (Record 99 to 101) that they received these cattle through the Union Stock Yards, and that their firm received the cattle as commission merchants, and sold them and sent to A. J. Gillespie & Company the account sales above referred to, and that those accounts are correct.

The same witness testified that the proceeds of these sales were deposited in the Union Stock Yards National Bank on the day the sales were made.

He further testifies in regard to the first lot of cattle, the gross proceeds of which were $6,649.50, that it was either paid in check or in duplicate sale ticket, which is usually deposited in the bank and the bank collects it of the man who buys the cattle. (Rec. 103).

He shows from his deposit book a deposit on the second day of October of $6,708.84, which he says includes the gross amount received for the 133 head of cattle on that day. (Rec. 104.). He says he sold the 810 head of cattle as follows: 353 head to Nelson Morris, 436 to Armour, J. O'Brien 13, Union Rendering Company 2, Quincy Stock Yards 6. And that Nelson Morris paid for 353 head of cattle by duplicate sale tickets; that Armour paid for in the Union Stock Yards National Bank, and which were collected by the 430 head of cattle by duplicate sale tickets, which they deposited them; that they deposited the proceeds of that sale, $20,547.33 in the Union Stock Yards National Bank by checks and sale tickets, as above stated, on the 3rd of October, 1885, and that the total amount of his deposits on that day were $23,290.83. (See Record 105 to 107).

He testifies also to sale of 122 head of cattle, being the third lot, to L. B. Doud & Company, at $2,568.52, for which he received a check and deposited it in the Union Stock Yards National Bank on the 6th day of October, 1885.

There is no testimony in the case contradicting the evidence which has just been cited, and we conclude that we may assume for the purpose of this case, absolutely, that these cattle were consigned by A. J. Gillespie & Company to Rappal Sons & Company, as commission merchants, for sale for the account of A. J. Gillespie & Company; that they were received by them and sold, and the proceeds to the amount of $24,257.21 were deposited to the credit of Rappal Sons & Company by Rappal Sons & Company, in the Union Stock Yards National Bank, in various items from October 2nd to 6th inclusive, and that by the method in which the business was done A. J. Gillespie & Company acquired legal control of the cattle for the purpose of their protection, according to whatever may have been the contract between them, and F. J. Rappal, Sr.

So far there is really no ground for controversy.

The real dispute is as to whether A. J. Gillespie & Company in paying the purchase money for these cattle and receiving them into there custody, as they did, and in shipping them under their orders to the Union Stock Yards, and in turning them over to Rappal Sons & Company as commission merchants to be sold and accounted for by them, did so in pursuance of an arrangement by which they were to hold the possession and ownership of the cattle until they were paid, or whether they did it as appellant claims, in pursuance of an arrangement by which A. J. Gillespie & Co. were to take charge of the detail of shipping said cattle for a considera-

tion, and were simply to loan the money for the payment of the cattle, without taking or retaining any security.

If however the cattle were put in the control of A. J. Gillespie & Company, and were by their order turned over to Rappal Sons & Co., commission merchants, for sale for the account of A. J. Gillispie & Co., and reports of sale were made to A. J. Gillispie & Company by Rappal Sons & Co. on that basis, and drafts were drawn against the proceeds, it would seem highly improbable that all this should mean nothing, while on the face of the matter these circumstances would seem to be the details of the method by which A. J. Gillespie & Company proposed to protect themselves on account of the payment made by them of the purchase money of the cattle.

III

The agreement between A. J. Gillespie & Company and F. J. Rappal, Sr., in pursuance of which A. J. Gillespie & Company paid for the cattle in question was in substance that A. J. Gillespie & Co. should own the cattle until their drafts were paid.

On this question there is a direct contradiction in the evidence; but it strongly preponderates in favor of appellees.

A. J. Gillespie testifies that he made an arrangement on behalf of his firm with Mr. Rappal, Sr., to do business for him in April, 1885; that Mr. Rappal, Sr. came to him and said he wanted to buy and ship some cattle to his house, and that he wanted to make arrangements with him, A. J. Gillespie, to pay for the cattle and to forward them to Rappal's house in Chicago. Mr. Gillespie testifies that his firm were to draw sight drafts against the cattle to get their money out of them, and were to hold the cattle as theirs until the drafts were paid, and that they were to receive twenty-five cents a head for doing the business, which was afterwards changed to $2.50 a car; that Rappal went on buying cattle under this arrangement and marking the scale tickets in such way as to direct A. J. Gillespie & Company to pay for the cattle; that A. J. Gillespie & Company kept the cattle in their own name, subject to their orders, and forwarded them to Chicago and kept an account in each transaction, and drew drafts for the balance of the account, and that they bought some cattle which were shipped, billed through on rates, and received an order on the Stock Yards Company in Chicago, for the number of cars, which order they endorsed over to Rappal Sons & Company, the cattle to be sold by them on commission, and if the drafts were paid, the cattle were to be theirs, (that is, Rappal Sons & Companys,) and if they were not paid, the cattle belonged to A. J. Gillespie & Company; that the arrangement was that they were to hold the cattle until they got their money; that the cattle were always in their possession. The parties they bought from gave them orders on the Stock Yards, and that all the time the cattle were really theirs, and under their control and in their possession.

He also says that by the direction of Mr. Rappal, Sr., the account was kept in the name of Bowen & Company; that Mr. Rappal gave as a reason, that he didn't want the commission men to know he was shipping cattle, and that he had a man by the name of Bowen with him; that he wanted the cattle handled in that name, to keep it seperate, and keep the people from knowing that Rappal Sons & Company were shipping cattle, and for that reason the trades or transactions were always designated as the Bowen & Company transactions, in order to keep them seperate from others. (Record 289; also Rec. 302).

Mr. T. E. Gillespie, a member of the firm of A. J. Gillespie & Co. testifies that Mr. Rappal reported to him the arrangement made between Rappal and the Senior member of the firm of A. J. Gillespie & Company, as follows:

That he, Rappal, had made arrangements for A. J. Gillespie & Company to pay for the cattle bought by him, and they were to get twenty-five cents a head for the cattle, and to ship them to Rappal Sons & Company; that A. J. Gillespie & Company were to pay for the cattle and ship them to Chicago and hold them in their name until they were paid for; that Rappal said that he (Rappal) would buy the cattle and A. J. Gillespie & Company were to pay for them for the said commission of twenty-five cents a head and ship them to Chicago, and hold them in their name and make drafts on Rappal Sons & Company; that they were to ship to Rappal Sons & Company as commission merchants and A. J. Gillespie & Company were to draw on each bunch of cattle for the cost of the same; that Rappal said he didn't want the account kept in his name as he didn t want any of the other commission merchants to know that he was in the shipping business, and that he had a man by the name of Bowen, and he had made arrangements with him to do business in his name, and keep the accounts in their books in the name of Bowen & Company. This witness further testifies that they commenced paying for and shipping cattle under their arrangement with Rappal in April, 1885; that they would buy a bunch of cattle for Rappal from commission men, and that they would be weighed in the name of Bowen, and the price would be marked on the back of the weight ticket, and that the ticket would be taken to the office of the man they bought of, and their bookkeeper would make out a bill and on that bill and ticket A. J. Gillespie & Company would pay for the cattle and receive an order for the cattle from the man they bought of, and thereupon A. J. Gillespie & Company would ship them to Chicago, giving instructions to the Railroad Company in regard to them; that those transactions were kept, so far as Rappal was concerned, as accounts relating to Bowen & Company; that the course of business was to draw against such cattle and against Rappal Sons & Company, for the cost of the cattle, the drafts being discounted at the Kansas City Stock Yards Bank and sent to the Union Stock Yards National Bank for collection. (Rec. 245, 251).

This witness further testifies as to the method of doing business that weigh tickets would be furnished them by Mr. Rappal marked sometimes W. P. B. and sometimes the word Bowen, to signify that the price on the weigh tickets was correct. (Record 251 to 254).

It is claimed by the appellant in this case that there was a firm of Bowen & Company, composed of F. J. Rappal, Sr. member of Rappal Sons & Company, W. P. Bowen and Milton James.

Whether such a firm existed or not is not important in this case, the question being, so far as this proposition is concerned whether A. J. Gillespie & Company had the legal right in those cattle and to the proceeds of them until their drafts against them were paid.

We mention this claim in this connection simply to emphasize the significance of Mr. James' testimony, to which we now refer.

Milton James testifies that he had an interest in these cattle, to be settled when the returns were made for the cattle; that A. J. Gillespie & Company paid for the cattle and had possession and control of the cattle from the time they paid for them until they were sold in Chicago; that the understanding was that A. J. Gillespie & Company were to pay for the cattle and when the cattle were paid for, they were to be under their control until the drafts were paid. (Rec. 309, 10).

The only testimony in conflict with this that may be considered as legal testimony in the case is the testimony of F. J. Rappal, Sr., who testifies (Record 434-5) that the arrangement was that A. J. Gillespie & Company were to advance the money for the cattle that Bowen & Company bought, and ship the cattle to Chicago, and they were to have $2.50 a car for compensation for advancing the money for the cattle and for managing the shipment; that he, as a member of the firm of Bowen & Company, made the arrangement with A. J. Gillespie & Company to draw on Rappal Sons & Company for the advance of this money; that Bowen & Company had no office at Kansas City and made their headquarters at A. J. Gillespie's for the most part, and for that reason the arrangement was that A. J. Gillespie & Company, were to keep the books, and attend to shipping the cattle for Bowen & Company in connection with their agreement to advance the money for the sum of $2.50 a car, and that the money advanced was simply a loan, and that there was no such agreement as that testified to by Mr. A. J. Gillespie and Mr. T. E. Gillespie. (Record 437 to 439.)

This witness says that he reported this conversation or agreement to his sons, F. J. Rappal, Jr. and L. L. Rappal, and they in turn testify to what their father reported to them was about the conversation; but this was not considered in the Court below as competent evidence, and of course is not.

The record therefore shows the affirmative testimony of three witnesses that the transaction under which the money was advanced was as claimed by the appellees in this case, against the unsupported evidence of one witness, to wit, the evidence of F. J. Rappal, Sr.

And then there is the further consideration, that it seems highly improbable that the custody of the cattle should be left in A. J. Gillespie's hands, that they should have the shipping orders, that the sales were accounted to them, in the way in which they were, and that all this was done and permitted simply for the convenience of bookkeeping. And it is further highly improbable that A. J. Gillespie & Company should advance these large sums of money, amounting to nearly two hundred thousand dollars during the entire course of this business, without any security whatever. (Record 287.)

This view of the testimony certainly ought to settle this question, and to leave the case, so far as the rights of A. J. Gillespie & Company are concerned to the proceeds of these cattle in the hands of the Stock Yards National Bank, unquestionable, unless the bank can hold these proceeds by virtue of its lien for over-drafts.

Certainly it will not be argued that upon this branch of the case the evidence supporting the claim of the appellees has been answered by an equal amount of evidence in the case. We think therefore that we can assume, as we proceed to argue the relation of the bank to this fund, that the proceeds of these cattle in the hands of Rappal Sons & Company was a trust fund, and the only question remaining is whether the bank received it in such a way that it ought to account for it to these appellees.

IV.

The circumstances known by the officers of the bank were sufficient to put them on inquiry, so that the bank is chargeable with notice that these deposits were the proceeds of these cattle shipped by complainants to Rappal Sons & Company, as above stated.

It may be stated at the outset of this inquiry that the bank is located at the Union Stock Yards of Chicago, Ills.; that the offices of Rappal Sons & Company and of the Union Stock Yards & Transit Company and of the bank, are near to each other, so that in a few moments any person could ascertain upon inquiry whatever were the facts in regard to this case. (Record 70).

These cattle, according to the usual course of business, were turned over to Rappal Sons & Co. on orders upon the Union Stock Yards & Transit Company by Mr. Williams, the Secretary and Treasurer of that Company, and when turned over, he took up from Rappal Sons & Company the order in their hands of A. J. Gillespie & Company for the delivery of the cattle. The drafts for the proceeds of the cattle were in the hands of the Union Stock Yards Bank. They were drawn by A. J. Gillespie & Company, and transmitted by the Kansas City Stock Yards Bank to the Union Stock Yards Bank for collection. If there had been any desire to ascertain the connection of the A. J. Gillespie & Company's drafts with any shipments that had been made to and received by Rappal Sons & Company through said Union Stock Yards & Transit Company, it

could, in almost a moment of time, have been ascertained by a messenger from the bank going to the office of Mr. Williams, and examining orders, from which it would have appeared that a quantity of cattle had been delivered into the hands of Rappal Sons & Co. at a time corresponding with the arrival of those drafts for collection, by the drawers of those drafts, and it could have been ascertained likewise that no other shipments were made by the said A. J. Gillespie & Company than these very shipments.

This would have put the bank on inquiry in regard to the rights of parties connected with these drafts, and thereupon a telegram to the Kansas City Stock Yards Bank would have immediately reached A. J. Gillespie & Company, between whom the Kansas Bank it appears in the record, it only took five minutes to communicate (record 297), and thus within a few minutes of time at the most the whole facts could have been ascertained.

We propose to show now in this connection that the facts and circumstances in the case were such as to put the bank upon this inquiry.

First: The bank was in such relation to the Stock Yards Bank of Kansas City as to require prompt and thorough investigation. They were doing a large amount of business with that bank, amounting to millions of dollars annually. (Rec. 277). They were under special instruction to present promptly all drafts for collection, and to immediately notify by telegram the Kansas City Stock Yards Bank of any failure to pay (Rec. 277, and letters of transmission 144, 145). This put them upon special diligence. A. J. Gillespie & Company were informed of this relation between the two banks. Inquiry had been made as to the reliability of Rappal Sons & Company through this bank, and this bank had recommended the reliability of that company to the Kansas City Stock Yards Bank, and they in turn had shown this recommendation to A. J. Gillespie & Company.

The evidence on this subject is as follows:

On the 17th day of July, 1885, P. Connelly, Asst. Cashier, of the Kansas City Stock Yards Bank wrote to George E. Conrad, Cashier of the Union Stock Yards National Bank, the following letter:

—C. F. Morse, Pres't; J. S. Chick, Vice-Pres't, W. S. Woods, Sec'y.

Kansas City Stock Yards Bank.

Capital Stock, $200,000.

KANSAS CITY, Mo., July 17, 1885.

Geo. E. Conrad, Esq., Cas., Chicago, Ill.

DEAR SIR: Will you kindly give me in confidence a statement in detail as to the financial standing of Messrs. Rappal, Sons & Co., their individual responsibility and the nature of their business, as also their reputation as business men: which favor I shall be glad to reciprocate at any time, and remain. Yours Respectfully,

P. Connelly, A. Sec."

(Rec. page 142).

To this letter the following letter was sent in reply:

"Union Stock Yards National Bank, July 20, 1885. P. Connelly, Esq., Assistant Cashier, Kansas City, Mo.

DEAR SIR: Your favor of the 17 inst. received. Rappal Sons & Co. are a firm in good standing, financially and otherwise. I don't think they keep much ready money in the business, but F. J. Rappal owns large farms near Joliet and is estimated worth $50,000 to $60,000. He is a man of high character and has always had good credit, even before he had any means. Yours truly,

G. E. Conrad,
Cashier."

(Record p. 278).

Mr. A. J. Gillespie testifies (Record 293) that this letter was shown him by the Cashier of the Kansas City Stock Yards Bank, and that at the same time he was informed that the Kansas City Stock Yarks Bank had made arrangements to be notified by the Union Stock Yards National Bank by telegram in case any draft was not paid.

This intimate business relation between all these parties was such as to require on the part of this bank diligence and care.

Second: They knew from the kind of business that had been transacted that promptness was indispensable in the payment of drafts: that the business was largely carried on upon a system of credits, guaranteed and secured by agreements that proceeds of shipments should be applied to pay drafts, and any failure to promptly pay and apply proceeds was itself a circumstance, which, coming to the knowledge of the bank, was sufficient to put the bank upon inquiry as to the reason, and to require of the bank prompt notice to the parties liable to be injured thereby.

Third: This kind of business had been going on between the parties for several months, during which about 1,500 car lots of cattle (Record 450) had been shipped and drafts for the proceeds had been drawn in the same way, as in the case of the cattle in controversy, against the proceeds of the cattle, which drafts had been discounted by the Kansas City Stock Yards Bank and forwarded to the Union Stock Yards National Bank of Chicago for collection. During all this time Rappal Sons & Company had kept their account with the bank and had received over-drafts, the accommodation being extended to them on the ground of their being commission merchants. (Record 98).

Rappal Sons & Company were not only depositors, but did their business largely through the aid of said Union Stock Yards National Bank. The elder member of the firm of Rappal Sons & Company was an old and intimate friend of the President, having relations with him extending far back. (Record 259).

This firm had its office, as already stated, in the adjoining building, about four or five hundred feet away from the bank, and was

doing exclussively a commission business. The drafts which came to the bank for collection were in the main drafts against commission men for proceeds of cattle shipped to them for sale. (Record 69 and 242 and 226). On Friday, the 2nd day of October, only two deposits were made in the Union Stock Yards National Bank by Rappal Sons & Co.; one was a small deposit of about $54.00 and the other was a single deposit of the gross amount of proceeds of the sale of 133 cattle, being the first shipment, said gross amount being $6,649.50, that being also the amount of deposit according to the deposit check. There was then in their hands a draft which arrived at the same time with the cattle, according to the due course of trade, drawn by A. J. Gillespie & Company for $6,231.10; in fact drawn against these proceeds. The deposit and the arrival of the draft exactly corresponds in time, according to the course of business, and there being no other draft that day in the hands of the bank against Rappal Sons & Company, and there being no deposit that day of any corresponding amount other than the single deposit of the net proceeds of that lot of cattle, it was presumable on the face of it, in view of the foregoing facts as to the kind of business the defendants, Rappal Sons & Company, were doing, in view of the course of business between the same parties within the knowledge of the bank, and in view of the fact that Rappal Sons & Company did exclusively a commission business which was known by the bank also, we say it was presumable that that draft was drawn against the proceeds of cattle shipped by A. J. Gillespie & Company, and that that deposit related to those proceeds. A reasonable man would put no other construction upon the facts within the knowledge of the officers of the bank.

Fourth: A member of the firm told the officer of the bank on the 2nd day of October that they would not pay that draft that day. (See Record page 515).

They in fact did not pay the draft that day; did not pay the draft at all, and the draft was protested.

This is the first of a series of drafts, and thus notice comes to the bank direct on the 2nd day of October, the same day of the first deposit of proceeds of the cattle in controversy, and no claim has been made that the cattle have not arrived, or that the cattle have not been sold. *It was simply stated by a member of the firm of Rappal Sons & Co. to an officer of the bank that that draft would not be paid that day.* No explanation was made and none asked for. Here was plainly made known to the bank a violation of duty by Rappal Sons & Company. Assuming that they were factors, they were failing to make immediate application of the proceeds of these cattle, according to the order of their principal, and the officers of the bank knew it and were at the same time intending to depart from instructions and to omit to immediately notify the Kansas City Bank of the non-payment of that draft. The bank having all these

facts before it and taking the responsibility of holding that draft until the next day, contrary to instructions, it seems clear that the bank was called upon to make immediate investigations in regard to the condition of Rappal Sons & Company, and in regard to the funds against which the draft in their hands had been drawn.

Fifth: The facts in regard to the proceeds of 810 head of cattle which were shipped on the 2nd day of October, 1885, and arrived in Chicago on the 3d day of October, 1885, that being Saturday, were so significant that it is impossible to believe that the bank did not know that the deposits made by Rappal Sons & Company in the bank on the 3d day of October, 1885, came from proceeds of cattle shipped by A. J. Gillespie & Company.

In the first place the bank knew that they were the proceeds of cattle sold by Rappal Sons & Company as commission merchants. The bank knew this, not only from the general course of business between the parties as already stated, but they also knew it from the fact that a large portion of these proceeds were collected by the bank upon scale tickets from the buyers of the cattle, which would show the kind of property, its weight, by whom sold and by whom bought. (See Rec. 193-4).

They knew, as we have already contended, of the shipment of the lot from which the proceeds were derived that were deposited on the 2nd day of October, and they knew that Rappal Sons & Company had refused to apply those proceeds in payment of a draft against them drawn by the shipper.

Under such circumstances, knowing as the officers of the bank did, the course of business between A. J. Gillespie & Company and Rappal Sons & Company, which had been going on for months, and in the course of which they as officers of the bank were collecting all the drafts; knowing also that there was a mail arriving regularly at the Stock Yards about 4 o'clock in the afternoon, (Rec. 338, 342), in which any communication from the Kansas City Stock Yards Bank would arrive, and that if for any accidental reason the drafts against those large proceeds deposited on the 3d day of October had failed to arrive by the earlier mails, they would be likely to arrive by the 4 o'clock mail; and in view of what had transpired the day before, and certainly in view of the fact of the failure to notifiy the Stock Yards National Bank of the non-payment of the draft the day before, the bank was fairly put upon enquiry, and if the least diligence had been exercised the mail would have been looked into, and on Saturday the drafts against those proceeds from A. J. Gillespie & Company would have been discovered which would have led to further investigation. It is not claimed, however, that any application was made of those deposits on Saturday, and when we come to Monday, the 5th, it is admitted that the draft for $19,505.62 had arrived and that it came to the notice of the officers of the bank as early as 9 to 10 o'clock in the forenoon. As soon as the draft arrived the bank officers must have known, or had grounds

to believe, that the proceeds of the sale of cattle deposited on Saturday were those against which that draft was drawn, and ascertaining, as they did at once, that it was not the intention of Rappal Sons & Company to pay that draft, and knowing also of the failure to pay the first draft, it seems to clear for argument that the bank, through its officers, was bound to take the little pains that would have sufficed to have ascertained about those deposits, and from which it would have definitely appeared that the deposits made in that bank on Saturday were the proceeds of the cattle against which this draft was drawn, and the draft being drawn, by A. J. Gillespie & Company in the course of the business with which the bank was familiar, it was notice to the bank, in view of the fact that Rappal Sons & Company were doing exclusively a commission business, that these proceeds probably belonged to A. J. Gillespie & Company.

Later in the day the bank received from the Kansas City Stock Yards Bank the following telegram:

"Dated Stock Yards, Kansas City. Received at Union Stock Yards, Ills., Oct. 5, 1885."

"G. E. CONRAD, Cashier: Get proceeds 34 cars cattle from Rappal, credit that amount on draft and advise at once. P. Connelly, Cashier, Acting Cashier."

About 4 p. m. the Union Stock Yards National Bank sent to the Kansas City Stock Yards Bank, a reply to that telegram, which was as follows:

"October 5th, 1885.

P. CONNELLY, Acting Cashier, Kansas City, Mo:

Firm say cattle were sold Saturday and they hold proceeds against account of Bowen & Company. Drafts $19,000 odd and $200 odd protested. Don't think they have anything to pay them.

G. E. CONRAD,
Cashier."

The bank knew now certainly that the Kansas City Stock Yards Bank claimed that the proceeds of 34 cars of cattle shipped to Rappal Sons & Company, and which they sold on Saturday, were applicable to this draft of $19,505.62 drawn by A. J. Gillespie & Company. The bank now, knowing of the course of business between these parties, and knowing of this deposit, and knowing of no other shipment to account for it, and being able, by going to Mr. Williams, Secretary and Treasurer of the Union Stock Yards & Transit Company, to ascertain definitely where the cattle came from, through whose order they were turned over, can with little plausibility contend that it is not chargeable with notice as to that lot of cattle.

It is useless to multiply words in this connection with reference to the last lot of cattle (122 head shipped on Saturday), for if the bank had notice in regard to the others, it certainly had notice as to this bunch of cattle, because all of the transactions were so united

together that if the bank was called upon to investigate in regard to one lot of cattle, it certainly would be led to investigate as to the others.

Sixth: The conduct of the bank all the way through was such as to leave the impression that the officers of the bank knew that they had no right to appropriate these proceeds. In the first place the bank had been carrying over-drafts of Rappal Sons & Company almost from the beginning of their account. A copy of the account of Rappal Sons & Company with the Union Stock Yards National Bank (Transcript 795-6 & 7) shows that the bank had been carrying an over-draft for Rappal Sons & Company from the 4th day of September, or about 30 days, and the amount of the over-draft had not varied much for the preceding 20 days, and it is not claimed that that over-draft was allowed on account of these cattle. It is admitted Rappal Sons & Company never advanced anything on account of these cattle.

Now, that being the state of affairs between Rappal Sons & Company and the bank, and the bank through its officers being fully informed as to the kind of business Rappal Sons & Company were doing, an attempt is made to apply proceeds of shipments in no way relating to those over-drafts in discharge of the liability of Rappal Sons & Company on the over-drafts. This of itself was wrong, because the bank could have no right to apply proceeds of sales in the hands of commission merchants in discharge of the individual debts of commission merchants, they being engaged in a commission business exclusively.

In the first place the failure to give notice of the non-payment of the $6,231.10 draft was significant. How it should happen that in a business amounting to millions annually the bank for the first time should fail to obey instructions by failing to give immediate notice of the non-payment of the draft, and that the result of such failure should enable the bank to get within its reach the proceeds of all these shipments, which were of course anticipated, is a suggestive question of enquiry.

Rappal Sons & Co. knew that the 810 head were to arrive, and that they were shipped on the 1st day of October, the day before the $6,231.10 draft arrived. If prompt notice had been given of the non-payment of the first draft on the 2nd day of October, these cattle could have been stopped or consigned to other parties, or in some way A. J. Gillespie & Co., or the Kansas City Stock Yards Bank might have protected themselves against loss, *but such notice would probably have prevented the bank getting the proceeds of those cattle which were deposited the next day in that bank.*

Again, the bank knew early Monday morning of the $19,505.62 draft, and might have known of it Saturday afternoon. It was rather extraordinary conduct for them to make no effort whatever to find out about the draft Saturday afternoon, and to take no steps to give the Kansas City Bank immediate notice of the true state of

affairs. The Union Stock Yards National Bank did not notify the Kansas City Stock Yards Bank in regard to the $6,231.10 draft until it received a communication from Connelly, the Cashier of the Kansas City Bank, directing a certain disposition of the proceeds of the draft which had been forwarded for collection. It was then and not till then that the Union Stock Yards National Bank caused notice by telegram to be sent to the Kansas City Bank informing that bank of the non-payment of the $6,231.10 draft, and on Monday after the $19,505.62 draft had come to the hands of the Union Stock Yards Bank, no communication was sent to the Kansas City Bank, although it was known quite early that the draft would not be paid, until a telegram of enquiry had been received. This telegram is as follows:

"Dated Stock Yards, Kansas City, Mo., Oct. 5.

To G. E. CONRAD, Cashier: Is Rappal $19,000 off. paid?

P. CONNELLY,
Cashier."

This telegram was received at 10:36 in the forenoon of October 5th. (Record 148). Then it being of course impossible to remain silent, the following telegram is sent in answer:

"Dated 10, 5.

P. CONNELLY, Assistant Cashier: Rappal Sons & Co. $19,000 and odd not paid.

C. JAMISON,
Assistant Cashier."

This telegram was received at 2 o'clock p. m. (Rec. 274).

To this Connelly replied, under telegram dated, Stock Yards, Kansas City, Oct. 5, as follows:

"To G. E. CONRAD, Cashier: Get proceeds 34 cars from Rappal; credit amount on draft and advise at once.

P. CONNELLY,
Cashier, Acting Cashier."

This telegram was received on the 5th at 3:08 p. m. (Rec. 151).

They then in reply on the same day, by telegram, sent at 4 p. m. as follows:

"October, 5, 1885.

P. CONNELLY, Acting Cashier, Kansas City, Mo.: Firm say cattle were sold Saturday, and they hold proceeds against account of Bowen & Company. Drafts $19,000 odd and $600 odd protested. *Don't think they have anything to pay with.*"

G. E. CONRAD,
Cashier."

Now it is a little remarkable that not until the close of the day was any intimation given that Rappal Sons & Company had nothing to pay with, and that they did not see fit to give the Kansas City Stock Yards Bank any information whatever until after they were fairly compelled to by the telegram of inquiry sent from the Cashier of the Kansas City Bank in the forenoon of the 5th day of October.

Thus by these delays the bank was enabled to get into its possession also the proceeds of the last shipment, of the 122 head of cattle

shipped on Saturday, the 3d day of October, 1885; and in this connection it may be said that the claim of the firm of Rappal Sons & Company that the proceeds were to be held to apply on the account of Bowen & Company, instead of being any excuse to the bank for omitting to investigate, should have put the bank on inquiry. Must it not have struck the officers of the bank as singular that cattle shipped by A. J. Gillespie & Company, as they must have known they were, by looking at the orders in the hands of Mr. Williams, and drawn against by A. J. Gillespie & Company, and which came in the same way that hundreds of cars of cattle had come before, the proceeds of which had been drawn against by A. J. Gillespie & Company and paid over, should now be turned by Rappal Sons & Company to apply on the private claim between them and some firm which they called Bowen & Company?

We submit that this circumstance alone was sufficient to put the bank on inquiry.

Up to this time it may be noted that no application had been made by the bank, of these proceeds, as we will show under another head. In passing, however, we desire to call attention to the fact that the bank had thus far simply received the proceeds, and they had not been checked out for any purpose whatever. Again, the conduct of the bank subsequent to this is peculiar. On the 9th day of October, without anything transpiring between the parties to occasion it, and without any call by the bank upon Rappal Sons & Company to settle their over-drafts, a settlement was made between the bank and Rappal Sons & Company, and these proceeds were applied in discharge of these over-drafts, and in part of a note of $7,000, when another note was given by F. J. Rappal, Sr. for 4,006 odd dollars, to balance the account, which note was secured by mortgage; and thus the account was closed between Rappal Sons & Company and the bank, in the particular form in which it had hitherto been kept; but the business of Rappal Sons & Company continued right along after that and the bank account after that was kept with the same bank, but under the name of "J. J. Rappal, Trustee."

Here was an attempt to apply the proceeds of property, which the officers of the bank knew must have come into the hands of Rappal Sons & Company as commission merchants, to discharge the private debt of Rappal Sons & Company, and the account is changed in form, (the business however proceeding as before), and the result is that Rappal Sons & Company become absolutely insolvent. (Record 475-112).

Now this was singular conduct on the part of the bank, and goes to show that the bank must have known that it had no right to apply these proceeds in that way.

Then, after this, in a letter dated October 6th, 1885, relating also to other things, Mr. Connelly, Cashier of the Kansas City Stock Yards Bank, puts this inquiry: "If Rappal Sons & Company are

in trouble financially, we will be greatly obliged for any information you will give us. Yours Respectfully,

P. CONNELLY, A. Cashier." (Record 153).

This letter is answered on the 8th day of October. On the day before this bank, through its officers, adjusted their account with Rappal Sons & Company and completed the application of these proceeds on their private debt to the bank. G. E. Conrad, Cashier of the bank, writes Mr. Connelly as follows:

"October 8th, 1885.

P. CONNELLY, Acting Cashier, Kansas City, Mo.:

DEAR SIR: Your favor of the 6th inst. received. F. J. Rappal has not been at the bank since he returned, and the firm have no money with us. I don't expect the two drafts you mention will be paid at maturity; at least they refuse to accept them, and I cannot tell you what condition they are in, or what they propose to do, but I judge they are in no condition to pay anything just now.

Yours truly, G. E. CONRAD, Cashier." (Record 153).

The two drafts referred to in this letter, it may be proper to explain here, are drafts that were drawn subsequently by F. J. Rappal, Sr. upon the firm of Rappal Sons & Company, upon the idea that those drafts would be paid within a few days, and thus the matters in difference between the parties be thereby adjusted, but the singular thing about this is, that Mr. G. E. Conrad, with the proceeds of this very property in the bank, should undertake to say that Rappal Sons & Company had no money with them in the bank, and that he could not tell what the condition of F. J. Rappal & Sons was, when he very well knew that he had in the bank proceeds of the very property on account of which these drafts were drawn; probably knew that it was already planned that there should be a formal transfer which would settle up the matters between the Union Stock Yards National Bank and the Rappal's, and would leave them utterly insolvent.

Later on, the conduct of the officers of the bank continued quite as remarkable. On the 12th of October, Mr. Connelly, desiring to find out about these deposits, telegraphed to Conrad, Cashier, as follows:

"GEORGE E. CONRAD, Cashier: If no objection, what was total of Rappal's deposit October 3d and 5th? P. CONNELLY,

A. Cashier." (Record 154).

The bank remained silent. No reply was vouchsafed to this very proper inquiry. On the next day the General Manager of the Kansas City Stock Yards Bank, Mr. C. F. Morse, makes inquiry by telegram as follows:

"To Union Stock Yards Bank: Please wire me fully to Grand Pacific particulars as to Rappal Sons & Company's financial standing. Have received notice from Connelly that their drafts have been protested. C. F. Morse, G. M." To which the officers of the Union Stock Yards National Bank make no reply.

Can any one resist the impression that in the language of the Court below. "*It (the bank) knew too much to be permitted to make the appropriation as against Gillespie & Company, who paid for the cattle and shipped them under the agreement already stated.*" (Record 58).

Such facts, by well considered authorities have been recognized as sufficient to put parties on inquiry and charge them with notice. In *Hogan v. Shorb, 24th Wendell, 458*, it is said: "When the name of the principal is disclosed at the time of sale, the vendee has no right to set up any equities between himself and the factor to defeat the action of the owner, and the same consequences will, *I think, follow if the vendee knew or had good reason to believe he was dealing with the agent of another, although the name of the principal was not disclosed.*" (P. Bronson, Justice.)

In the notes on *George v. Clagett* (7th Term Reports, 359), in 2nd Smith's leading cases, 363, upon suming up a very full review of the cases it is said: "In order to make a valid defense within the rule laid down in a particular case, it is necessary to show that the contract was made with a person whom the plaintiff had intrusted with the possession of the goods; that that person sold them as his own, in his own name as principal; with the authority of the plaintiff, *and that the defendant dealt with him as, and believed him to be principal in the transaction.*"

Again. "The rule in *George v. Clagett* does not obtain where the purchaser knows the agent is not owner, *or where circumstances are brought to his knowledge by investigating which he might have ascertained that the agent was not the owner.*" (*Citing Burnshouse v. Abbott, 16th Voom 531. Stewart v. Woodard, 50 Vt. 81. Wright v. Cabot, 89 N. Y. 574. Crosby v. Hill, 15 Rep. 758 (Supreme Court, Ohio). Dunn v. Wright 51, Barber 250 and Miller v. Lea, 35 Md. 396*, where Alva, J. says: "Hence if the character of the selling is equivocal, if he is known to be in the habit of selling sometimes as principal and sometimes as agent, a purchaser who buys with the view to covering his own debt and availing himself of a set off, *is bound to inquire in what character he acts in the particular transaction, and if he chooses to make no inquiry, and it should turn out that he has bought of an undisclosed principal, he will be denied the benefit of his set off*").

In Barring v. Corrie, 2nd B. & A., 137, the Court, commenting on circumstances from which notice might be inferred say: "There is another circumstance by which the defendants might easily have ascertained whether Coles & Company acting as brokers, did in the usual course of dealing, as a broker is bound to put down in his book an account of the sales made by him in that capacity, so that if the defendants had asked to see the books they would instantly have discovered whether Coles & Company acted as brokers or not. *I cannot think that the defendants believed when they bought the goods that Coles & Company sold them on their own account, and if not, they can have no defense.*"

And in Smart v. Sanders, 3 C. B. 399, and Fish v. Kemper, 7 C. B., 694, it was held that knowledge by the purchaser that the vendor was selling as factor disentitled the purchaser to the set off.

It seems to us that in the case of Fish v. Kemper (7 Mann Gr. & Scott 687) Wilder Justice states the rule as it is held in American Courts, in the following language used by him in that case:

"Where the goods are placed in the hands of a factor for sale and are sold by him under circumstances that are calculated to induce and do induce a purchaser to believe that he is dealing with his own goods, the principal is not permitted afterwards to turn around and tell the vendee that the character he himself has allowed the factor to assume did not really belong to him. * * * * But the case is different where the purchaser has notice at the time that the seller is acting merely as the agent of another."

"In that case, there would be no honesty in allowing the purchaser to set off a bad debt at the expense of the principal. This I consider to be clear and settled law."

It seems to us that the principle underlying all these cases is correctly held in Nichols v. Martin, 35th Hun. 168, which base such cases on the equitable principle that where one of two innocent persons must suffer, the loss should fall on him who has given the opportunity to cause it.

Now this principle has never been applied, except where the party invoking it is free from negligence, and as between A. J. Gillespie & Company on the one side and the Union Stock Yards National Bank on the other, the bank being located where the transactions occurred, and its officers cognizant of all these facts which have been set forth, it would seem to be almost a travesty of justice to say that they stand in equal innocence with A. J. Gillespie & Company; and furthermore, they cannot in any view of the case suffer by being compelled to account for these proceeds to the true owner, if they never did anything to their prejudice on the faith and belief that these funds actually belonging to Rappal Sons & Company, there is not a particle of evidence in the record anywhere that shows that they ever, before the facts above set forth came to their notice, did a thing to their prejudice on the faith of these funds belonging to Rappal Sons & Company.

V.

At all events the evidence that such facts and circumstances were known to the bank as should have put it on inquiry, was such that the finding of the Court below that the bank had notice, will not be disturbed.

The question of notice is one of law and fact; but there is no claim that any improper law was applied to the facts in this case, and therefore it is in substance a question of fact whether the bank had notice. (See Carrol v. Upton, 3d N. Y. 274. Clark v. Owen, 18 N. Y. 435).

This being so, no one will say that there is not a large amount of evidence supporting the finding of the Court. We understand that in chancery cases where the evidence is conflicting, this Court will not attempt to disturb the finding of the Court below. Such seems to have been the view taken in the following cases in this Court: Parker v. Phetteplace, 1st Wallace, 334, Alvis v. U. S. 8th Wallace, 337; Harriet v. Deal, 17th Wallace, 590 and Lytle Arkansas, 22nd Howard 193.

VI.

The bank had not parted with any of these funds, nor had it taken any steps to its prejudice on the faith of them at the time they had specific notice that these funds belonged to appellees, and the bank could not hold them by virtue of the general lien for overdrafts which had existed for several days prior to deposits, so that the bank is liable whether there was or was not sufficient prior to specific notice to put the bank on inquiry.

It is not necessary to maintain this proposition in order to sustain the decree in this case. The Union Stock Yards National Bank in our judgment is totally destitute of any defense in this case on any ground. It is not in the position of a bona fide holder. It had direct and specific notice on the 5th day of October by telegram from Mr. Connelly directing the bank to go and see to the application of proceeds of 34 cars of cattle in the payment of this draft. How, after that direct notice, can the bank say that it did not know specifically, not inferentially, but specifically, where those cattle came from and that they were drawn against by these drafts?

Now the only check that had been put through the bank on account of these deposits at that time was a single check of 1,050 odd dollars, to apply on the note of $7,000.00 held by the bank against Rappal Sons & Company.

It is claimed by the officers of the bank in their testimony that they didn't get this notice until after that application; but it will be noted that the deposits from the proceeds of these cattle is a deposit of *the gross amount received for the cattle.* The gross amount received for the 810 head of cattle was $20,457.33. The charges against all this amounted to $4,027.64; the net proceeds therefore were only $16,519.69; and it will be presumed that that check was drawn against and paid out of that portion of the deposits which actually belonged to Rappal Sons & Company, so that it remains absolutely true that the bank simply received the money and had it in hand, without any specific application of any kind, up to the time that the bank had direct notice of the source of proceeds, or of such facts that nobody will contend that the bank was not put upon inquiry—notably the information conveyed by the telegram on the 5th (Monday) of October, 1885, directing the bank to have proceeds of 34 cars of cattle applied on the draft.

In such cases, in following a trust, it seems to be a doctrine

pretty well established that the party must make himself out to be a bona fide purchaser, and that he must show that he will actually suffer damage if made to account, and hence the courts have gone so far that in enforcing a trust against a third party, such party will not be treated as an innocent purchaser, if he has not actually paid the consideration money, even though he has contracted so to do.

Without going so far, we contend that if a party has not prejudiced himself, either by paying the consideration or by extending a debt, or cancelling an evidence of debt, or in any other way, he cannot resist the claim of the owner of any fund or property that has come into his hands. See Dickenson v. Tillinghas, 4th Paige, 221. Codington v. Bay, 20th *id* 236. Russell v. Norsworth, 2nd leading cases in equity, 103. Van Allen v. Am. N. B. 52. N. Y. 1. Nichols v. Martin, 35 Hun. 168.

VII.

If the cattle belonged to appellees, then the proceeds derived therefrom became trust funds in the hands of Rappal Sons & Company, and were held by them in trust for appellees. Although a purchaser from a commission merchant, (he being a factor) might be protected as against the real owner, still there can be no question but that the proceeds of sales in his hands belong to the principal. That proceeds of sales made by commission merchants are held by them in trust for the principal is not only so on principle but it is so held. (See Scudder v. Sharl, 17th Howard's Practice 420. Duguid v. Edwards, 5th Barber, 289. Manufacturing Co. v. Dihon, 5th Pickering 7. Merrill v. Bank of Norfolk 19th Pickering 32.)

VIII.

The proceeds of the cattle sold by Rappal Sons & Company being trust funds and held by Rappal Sons & Company in trust for A. J. Gillespie & Company to be paid to their order, that trust followed these funds and affected them in the hands of the appellant bank and the bank was bound in equity to account for them to the appellees.

In the preceding branches of our argument we have endeavored to show that these funds were in fact affected by a trust in the hands of Rappal Sons & Company, and we have attempted to show that the bank had notice of the trust.

If we are correct in the position that these funds were affected with a trust, it follows on the basis of authority, that they can be followed into the hands of the bank. That question as to whether it can be followed, the premises being established, as we have contended, is really not an open question for discussion. It is settled by an array of authority that no one would attempt to challenge, and the cases we have referred to in support of the equitable jurisdiction of this Court are nearly all of them in point here.

In addition to the cases which we have cited under our first point, we call the attention of the Court to the following, which may be consulted, if any question remains, as to our position, that the Courts will follow a fund similar to the one in controversy into the hands of a third party and will compel the party holding it to account, viz:—Manufacturing Company v. Dihon, 5th Pickering 7. Merrill v. Bank of Norfolk, 19th Pickering 32. Pennell v. Hurley, 2 Col. Ch. Cas. 241. Bodenham v. Hoskyns, 2 D. G. M. & G. 903. Pennell v. Duffel, 4 D. M. & G. 372. Frith v. Cartlan, 2nd H. & M. 417. Ex parte Kingston L. R. C., 362. In Re Hallet's Estate 13 Ch. A. 696. Poor v. Bank of Virginia, 2 Gratt. 547. Wormsley v. Wormsley, 8th Wheaton, 421. Caldwell v. Cunningham, 9th Peters 86.

Finally, it is certainly gratifying in endeavoring to sustain this decree that it is so evident that justice and equity has been done.

No one can look into the record of this case without at once becoming satisfied that the bank knew what it was about when it attempted to apply these proceeds in discharge of the private debt of Rappal Sons & Company. The conduct of the bank officials shows it. Things did not so happen by chance, as the bank officers would have us believe, that they innocently got control of all these funds. It was not a mere chance circumstance that they omitted to give notice of the non-payment of the first draft. The delays of notice, the supineness and inactivity of the bank officials, the failure to make prompt replies, very naturally brought about results, so that all the proceeds of all these cattle, of the entire lot that were to be shipped, came into the hands of the bank, these things did not happen by chance, and it was in keeping with the idea that these proceeds were being illegally diverted that the account was changed from Rappal Sons & Company to "J. J. Rappal, Trustee," on the very day that the account was settled with the bank and that from that time afterward Rappal Sons & Company kept right on doing business, although insolvent.

Moreover the bank itself is located in the midst of commission merchants. It does little or no business except such as relates to commission merchants. The President himself says that its business is mainly with commission merchants, and excuses these large over-drafts on the ground that it was the custom of the bank to carry heavy over-drafts for the accommodation of its customers, because of the *peculiar requirements of the commission business;* thus admitting that he knew that he was doing business with a commission firm, engaged in the business of selling other people's property. This case is not like the Maryland case (supra) where the Justice in the opinion of the Court says, that where a factor does business sometimes for himself and sometimes for others, the purchaser ought to look into it; but here is a case where the business is totally a business of selling on commission. Fred J. Rappal, Jr., testifies that there business was livestock commission (Record 100.)

L. L. Rappal, one of the firm, testifies that they did a commission business, *and that so far as he knew they never did anything but a commission business* (Record 542), and the bank knew that they were a commission firm. The fact being proved that they never did anything but a commission business, the bank never could have supposed that Rappal Sons & Company owned these deposits.

Moreover these drafts were drawn according to the usual custom as against proceeds of cattle. The bank knew that presumably the drafts were against proceeds of cattle. Charles Jamison, Asst. Cashier of the bank, testifies that the course of business is for shippers to draw against proceeds of cattle. He says that the greatest portion of the drafts which they received for collection are drawn against consignments of stock (Record 326). Being pressed he says, *nearly all of them are drawn against such proceeds.*

The force of the facts in this case is cumulative. The bank is situated only four or five hundred feet from the office of Rappal Sons & Company, its President is an intimate acquaintance with the Senior member of the firm of Rappal Sons & Company, and thoroughly acquainted with the peculiar course of business at the Union Stock Yards; the bank is under positive and stringent instructions from the Kansas City Stock Yards Bank; its officials are thoroughly informed how much depends upon a speedy application of proceeds to the payment of drafts drawn against consignments of cattle; it received and collected the scale tickets by which the information was obtained that these proceeds came from cattle which they had sold; it knew that proceeds of sales were being thus deposited and that drafts were being dishonored, and none were being paid that at all corresponded with these deposits.

These and many other circumstances which we might mention, especially the conduct of the bank afterwards, satisfy the minds that substantial justice has been done by the decree of the Circuit Court, and we respectfully submit that it ought to be affirmed.

L. H. BISBEE,
JOHN P. AHRENS,
HENRY DECKER,
Attorneys for Appellees.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1890.

No. 79.

THE UNION STOCK YARDS NATIONAL BANK

vs.

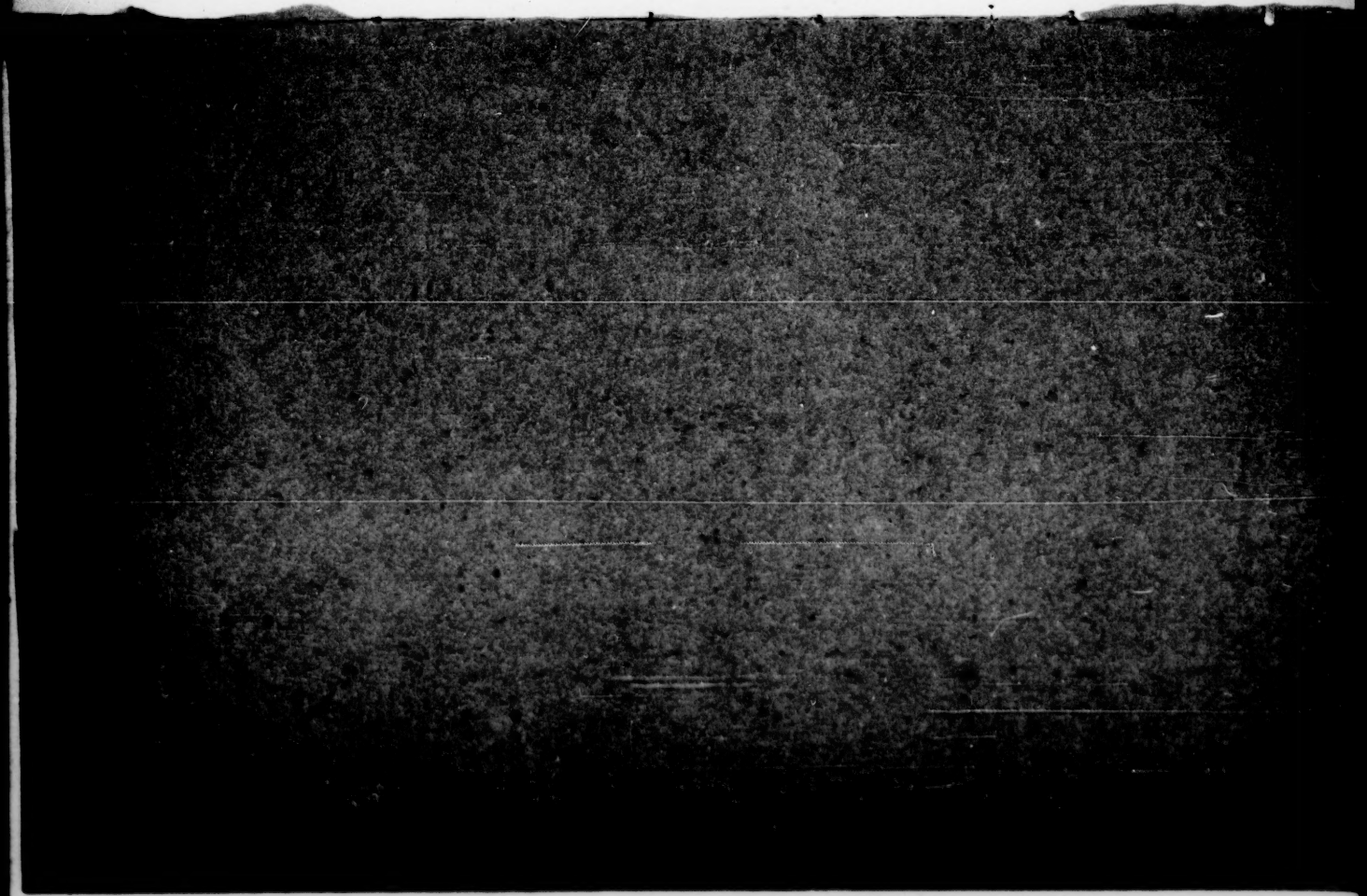
A. J. GILLESPIE ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

PETITION FOR REHEARING.

EDWARD O. BROWN,

SOLICITOR AND COUNSEL FOR THE UNION STOCK YARDS NATIONAL BANK OF CHICAGO.



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Appeal from the Circuit Court of the United States for the Northern District of Illinois.

PETITION FOR REHEARING.

And now comes The Union Stock Yards National Bank of Chicago and prays for a rehearing of the said cause, and for grounds of said rehearing it says:

First. That the court in its opinion and judgment overlooked the undisputed fact shown by the record, that the owners of the cattle involved in the controversy in this cause, whoever said owners might be, were indebted to Rappal, Sons & Co. for former advances to an amount greater than the proceeds of said cattle in controversy, and consequently had no right to such proceeds against either Rappal, Sons & Co. or the bank.

The appellant has heretofore taken the position that A. J. Gillespie & Co. were not the owners of the cattle in controversy, but the court in its opinion must be held, of course, to have settled this point against it.

The learned judge says: "The Gillespies, until their "money advanced and stipulated profits were received, "were equitably the owners. "*The senior Rappal or* "*Bowen & Co. were agents to purchase* with a stipulation "for compensation for services if the amount received "exceeded a named sum."

Taking this then as the law of the case, it follows that Rappal, Sons & Co. had the same rights against A. J. Gillespie & Co. as they would have had against any other owner of cattle shipping to them for sale on commission. This right, by all authorities, includes a right to reimburse themselves out of the proceeds of goods consigned to them, for advances in excess of proceeds on goods previously consigned.

These advances so in excess of proceeds received, amounted in the present case, as the record shows, to $29,000, before the cattle in controversy came to the hands of the Rappals and complainant's drafts were refused, being $5,000 more than the net proceeds of these consignments in controversy. *This amount was owed by the owners of the cattle, to Rappal, Sons & Co.*

We cannot suppose the court to take the position that Rappal, Sons & Co., doing a commission business purely, and having no interest at all in the ventures, were not entitled to the ordinary and unquestioned right of factors to recoup themselves out of the proceeds of the consignor's cattle in their hands for the excess of their advances made to the same owners, on previous consignments.

Therefore it would seem that the fact that such advances had been made, must have been overlooked by this court. It is not referred to in the opinion, and it seems that its consideration must reverse the judgment.

The matter is set out under the third point of the appellant's brief and argument, and the uncontradicted evidence which supports it in the record there pointed out. Appellant's argument, pp. 40 to 46.

And it is to be remarked under this point:

a. That the complainants' bill represents Gillespie & Co. as the owners of the cattle, and entitled to the profits and bound to stand the losses resulting from their sale, for it is the "*net proceeds*" and not the *cost* of the various consignments which the complainants are said to be entitled to.

b. That the record shows that not only did Rappal, Sons & Co. advance previous to the consignments in question $29,000 in excess of the proceeds on precisely similar consignments to the complainants, but the money came from the appellant bank, and was made up from the overdrafts of Rappal, Sons & Co.

c. That the question of what notice the bank must be, under the opinion of the court, held to have had, is affected by this state of facts, as the fullest inquiry and investigation by the bank, could have revealed nothing in contradiction to this.

Secondly. That in discussing the question of equitable jurisdiction the court overlooked the fact that the bill of the complainants makes allegations equivalent to a statement inconsistent with that portion of the opinion of the court on which the jurisdiction in equity is sustained.

The court rests the equitable jurisdiction on the proposition that the legal title and control of the money which was the proceeds of the consignments in controversy was in Rappal, Sons & Co.

The bill alleges that the money in question was Gillespie & Co.'s, which Rappal, Sons & Co. were *bound to hold*